रजिस्टर्ड नं0 HP/13/SML-2008.

# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

**शिमला, शुक्रवार, 5 दिसम्बर, 2008 / 14 अग्रहायण, 1930**

### हिमाचल प्रदेश सरकार

### नगर एवं ग्राम योजना विभाग

### सालन विकास योजना में सौर अप्रतिरोधी भवन ढांचे के लिए प्रारूप विनियमों बारे प्रकाशन की सूचना

शिमला, 15 नवम्बर, 2008

**संख्याः हिम / टी0पी0 / एजैड आर / खण्ड–X / 08–9623–9823.**––हिमाचल प्रदेश नगर एवं ग्राम योजना अधिनियम, 1977 (1977 का 12वां अधिनियम) के अन्तर्गत धारा 19 की उपधारा (1) में निहित शक्तियों का प्रयोग करते हुए सोलन विकास योजना में सौर अप्रतिरोधी भवन ढांचे के लिए प्रारूप विनियम एतद् द्वारा प्रकाशित किए जाते हैं तथा सूचित किया जाता है कि उक्त प्रारूप विनियमों की एक प्रति निम्नलिखित कार्यालयों में कार्यालय अवधि के दौरान निरीक्षण हेतु उपलब्ध है :–

1 निदेशक,
नगर एवं ग्राम योजना विभाग,
हिमाचल प्रदेश, नगर योजना भवन,
ब्लॉक नं0 32–ए, एस0डी0ए0 कॉम्पलैक्स,
कसुम्पटी, शिमला–171009

2 नगर एवं ग्राम योजनाकार,
मण्डलीय नगर योजना कार्यालय
सोलन, जिला सोलन ।

3 कार्यकारी अधिकारी,
नगर परिषद सोलन,
जिला सोलन ।

सौर अप्रतिरोधी भवन ढांचे से सम्बन्धित प्रारूप विनियम अनुबन्ध–"ए" पर हैं । यदि उक्त प्रारूप विनियमों से सम्बन्धित किसी को कोई आपत्ति एवं सझु ाव हो, तो उन्हें लिखित रूप में निदेशक, नगर एवं ग्राम योजना विभाग, हिमाचल प्रदेश, नगर योजना भवन, ब्लॉक नं0 32–ए, एस0 डी0 ए0 कॉम्पलैक्स, कसुम्पटी, शिमला–171009 अथवा नगर एवं ग्राम योजनाकार, मण्डलीय नगर योजना कार्यालय सोलन, जिला सोलन अथवा कार्यकारी अधिकारी, नगर परिषद, सोलन, जिला सोलन को सरकारी समाचारपत्र में इस सूचना के प्रकाशन की तारीख से तीस दिन की कालावधि के भीतर भेजे जाने चाहिए ।

निदेशक,
हस्ताक्षरित / –
नगर एवं ग्राम योजना विभाग।

————————

## TOWN AND COUNTRY PLANNING DEPARTMENT

NOTICE FOR PUBLICATION OF DRAFT REGULATIONS ON SOLAR PASSIVE BUILDING DESIGN IN DEVELOPMENT PLAN SOLAN.

*Shimla 15 November, 2008*

**No. HIM/TP/AZR-Vol-X/08-9623-9823.—**In exercise of the powers vested under sub section (1) of Section-19 of the Himachal Pradesh Town and Country Planning Act, 1977 (Act No. 12 of 1977), the draft regulations on Solar Passive Building Design in Development Plan, Solan are hereby published and notice is given that a copy of said draft regulations is available for inspection at the following offices during the office hours:—

1. Director,
Town and Country Planning Department,
Himachal Pradesh, Nagar Yojana Bhawan,
Block No.32-A, SDA Complex, Kasumpti, Shimla-171009.

2. The Town and Country Planner,
Divisional Town Planning Office,
Solan , District Solan.

3. The Executive Officer,
Municipal Council, Solan
District Solan.

The draft regulations pertaining to Solar Passive Building Design are at Annexure-“A”.

If there be any objection/ suggestion with respect to the said draft regulations, it should be sent to the Director, Town and Country Planning Department, Himachal Pradesh, Nagar Yojana Bhawan, Block No.32-A, SDA Complex, Kasumpti, Shimla-171009 or the Town and Country Planner, Divisional Town Planning Office, Solan, District Solan or the Executive Officer, Municipal Council, Solan District solan before the expiry of thirty days from the date of publication of this notice in the Official Gazette.

Director,
Sd/-
Town & Country Planning.

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ANNEXURE-A

**PROPOSED ADDITION OF REGULATION 11.3 (xxxxv) IN CHAPTER-11 OF DEVELOPMENT PLAN FOR SOLAN PLANNING AREA PERTAINING TO INCORPORATION OF SOLAR PASSIVE BUILDING DESIGN**

**11.3 (xxxxv) SOLAR PASSIVE BUILDING DESIGN**

**1. Scope.—** The Solar Passive Building Design is mandatory in Government/ Semi Government/ Autonomous/ Commercial Buildings to be constructed in Planning/ Special Areas of the State.

**2. Building Map.—**The map for the building should accompany a statement giving details of solar passive heating/cooling/day lighting features alongwith technical specifications of solar space heating/ cooling system, solar photovoltaic, energy efficient and other renewal resource devices to be installed alongwith expected energy saving in the building.

**3. Site Selection.—**The site should preferably be selected on southern slopes/ side. Survey of the site has to be got done to determine adequate solar energy availability and solar access alongwith data on climatic conditions.

**4. Orientation.—**The longer axis of the building should lie along east/west directions to trap maximum solar energy.

**5. Planning Spaces.—**The main habitable spaces of a building should be planned and designed in such a manner so that natural day light is available. The stair cases, garages, toilets and stores to be planned preferably in northern side. Minimise door and window openings on north side to avoid heat losses and maximize south facing glazing to capture maximum heat as per site and climatic conditions.

**6. Integrating Solar Space Heating Systems in Building Design.—**

**6.1** Passive solar heating systems like solar air heating/ water heating/sun space/solar walls/solar trombe wall etc. are to be integrated in the building design on southern side so as to allow maximum direct solar access to these system.

**6.2** The suitability of space heating systems to be installed or incorporated in the design of a solar passive building is to be decided by the Architect/ solar expert as per the building site/ climate/space heating requirements.

**6.3** All solar/ water heating systems should have an automatic electric backup system so as to function during cloudy/non sunshine days.

**6.4** The solar water heating system is to be integrated preferably, in the roof of the building so that the panels become a part of the roof. The solar collectors on the roof inclined at angle of 450 to 500 for receiving maximum solar radiation, will be allowed in all parts of the State.

**6.5** The sunspace/solarium/solar green house/solar wall/solar chimneys etc. will be allowed on the roof top for utilizing solar energy for heating of the building.

**6.6** Provision in the building design itself is to be kept for an insulated pipeline from the rooftop in the building to various distribution points where hot water/hot air is required.

**7. Solar Photovoltaic Panel (SPV) for lighting.—** Solar photovoltaic panels are to be integrated preferably in the building design for lighting/ street lighting/emergency lighting in order to reduce electricity usage and to save the energy.

**8. Solar Passive Cooling Design Features**

**8.1 Cross Ventilation.—** Windows on opposite sides of rooms be provided for proper circulation and ventilation of fresh and cool air.

**8.2** South windows are to be fixed with overhangs to provide shade from summer.

**8.3 Colour and shading.—**The external surface of the wall is to be painted with white/light colours to reflect instant solar radiations.

**8.4 Ground embankments.—** Ground floor be provided with earth beaming to a height of around 1.00 Metre for taking the advantage of constant temperature of the earth through out the year.

**8.5 Outside temperature be modified by land scaping.**

**9. Reducing thermal losses.—** The building structure and materials are to be utilized to meet the heating and cooling requirements by means of storing warmth and coolth.

**10. Outer Wall Thickness.—** Outer walls of the building should be made atleast 0.24 Metre thick/or with cavity/or with insulation for thermal comfort and to avoid the transfer of heat from outer environment to inner environment and vice-versa.

**11. Installation of Solar Assisted Water Heating System in Buildings**

**11.1**. No new building plan in the following categories in which there is a system of installation for supplying hot water shall be cleared unless the system of the installation is also having an auxiliary solar assisted water heating system:—

(a) Hospitals and Nursing Home.

(b) Hotels, Lodges and Guest Houses, Group Housing with the plot area of more than 4000 Sqm.

(c) Hostels of Schools, Colleges and Training Centres with more than 100 Students.

(d) Barracks of Police.

(e) Functional Buildings of Air Ports like waiting rooms, retiring rooms, rest rooms, inspection bungalows and catering units.

(f) Community Centres, Banquet Halls and buildings for similar use.

**11.2 (a)** New buildings should have open space on the rooftop which receives direct sun light. The load bearing capacity of the roof should at least be 50 Kg. per Sqm. All new buildings of above categories must complete installation of solar water heating system before putting the same in use.

(b) Installation of solar assisted water heating systems in the existing building shall be made mandatory at the time of change of use to above said categories, provided there is a system or installation for supplying hot water.

11.3 Installation of solar assisted water heating systems shall conform to BIS specification. The solar collectors used in the system shall have the BIS certification mark.

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**IN THE COURT OF SHRI SURESHWAR THAKUR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference: No. 185/05

Presented on: 24.11.2005

Decided on:13.9.2007

Sh. Ravinder Kumar s/o Raghuvir Singh R/o VPO Thakurdhawarn, Tehsil, Indora, Distt. Kangra, H.P. . .*Petitioner.*

*Versus*

1. The Managing Director, H.P. Financial Corporation Shimla-1

2. The Manager, H.P. Financial Corporation, Ram Nagar, Dharamshala, Distt. Kangra, H.P.
..*Respondents.*

ORDER/AWARD

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

"Whether the termination of services of Shri Ravinder Kumar S/o Raghuvir Singh workman by the Managing Director, H.P. Financial Corporation, Shimla-1 (2) The Manager H.P. Financial Corporation, Ram Nagar, Dharamshala, Distt. Kangra, H.P. w.e.f. 11.4.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

13.9.2007 Present : None for the petitioner Respondent already exparte

The case has been called thrice but none appeared on behalf of the petitioner. It is 11:30 A.M. Be put up after lunch.

Sd/-
SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial Tribunal*
*Dharamshala.*

13.9.2007 Present: As above

The case has been called twice or thrice. Neither petitioner nor his counsel appeared. It is 3.30 P.M. Hence the case is dismissed in default. The reference answered accordingly. The file its due completion be consigned to the record room.

Sd/-
Announced Sureshwar Thakur,
13.9.2007 Presiding Judge,
Labour Court-Cum-Industrial
Tribunal, Dharamshala, H.P.

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT , DHARAMSHALA, DISTT. KANGRA H.P.**

Reference: No 174/2003 (RBT 25/04)
Presented on : 6.12.2007
Decided on 22.12.2007

Sh. Gulwant Singh S/o Sh. Kali Dass, R/o Passal P.O. Chauntra, Tehsil, Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, H.P. State Electricity Board Electrical Division, Joginder Nagar, Distt. Mandi, H.P. ..*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Vikramjeet Sharma, vice , Adv.

For the respondent : Sh. Bhagwan Chand, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averments and contentions that the claimant was initially engaged as a daily waged Beldar in the year 1998 in which capacity he rendered work uptil

July, 2001. It has been contended in the claim petition that despite his having rendered 240 days of continuous service in the 12 calendar months preceeding his retrenchment thereby necessitating the application of the principle stipulated in section 25-F of the I.D. Act by the respondent while disengaging the services of the claimant, the respondent of not complying with the statutory requirement of section 25-F has been contended to render his retrenchment illegal. So it is also contended that the act of the respondent in not adhering to the principle of LAST COME FIRST GO, also renders his disengagement by the respondent as illegal.

The respondent filed reply to the claim petition, wherein, the, respondent took preliminary objections that the claim petition is barred by limitation as also it is not maintainable. On merits, it is contended by the respondent that the contentions in the claim petition that the claimant had rendered the period of qualifying service necessary for according to him benefit of section 25-F of the I.D. Act is untruthful. Furthermore it is also contended that the service of the claimant was dispensed with by the issuance of notice to him appended as annexure R-2 to the claim petition. Also it was contended that the respondent has not breached the principle of 'LAST COME FIRST GO' while disengaging the services of the respondent.

On the pleadings of the parties, this Tribunal framed the following issues:

1. Whether the termination of petitioner by respondent from July, 2000 and retaining the juniors is proper and legal? OPR

2. If issue no.1 is not proved, to what relief of service benefits the petitioner is entitled to? OPP

3. Whether the petition is not maintainable, as alleged? OPR

4. Whether the petition is estopped to file and maintain the petition in view of his act, and conduct, as alleged? OPR

5. Whether the petition is barred by limitation? OPR

6. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No.1 | No |
| Issue No.2 | As per operative part |
| Issue No.3 | Not pressed |
| Issue No.4 | Not pressed |
| Issue No.5 | No |
| Relief | As per operative part |

## REASONS FOR FINDINGS

Issues No. 1, 2 and 5

Since all these issues are interlinked, hence, taken up together for determination.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.562/2006 titled as HP State Electricity Board Electrical Division Vs. Gulwant Singh & Anr. which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the ld. counsel for the petitioner belatedly on 6.12.2007, hence I would proceed to decide the matter after allowing the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. P1. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days of continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then when their being breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered, then, while believing the view of the respondent then he was engaged against works of purely a casual nature which, nature of engagement of the claimant against such nature of work has also, not been sought to be repulsed by satisfactory evidence to the contrary by the claimant. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Ex. RW1/A achieve conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits accordingly the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

**Explanation.**-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

It is also contended by the claimant that their has been infraction of the provisions of section 25-G of the Industrial Disputes Act by the respondent while disengaging him from service, inasmuch, as, three persons detailed in Ex. P1 and despite their being juniors to the claimant their

having come to be retained in service which retention of the aforesaid juniors has been voiced to infringe the provisions of section 25-G of the Industrial Disputes Act mandating the principle of 'Last Come First Go' whose transgression by the respondent employer has also been then, argued to be rendering the disengagement of the service of the claimant by the respondent to be illegal. Now, while testing the fact of the aforesaid persons being juniors or not to the claimant at the time of disengagement from service of the claimant by the respondent it is necessary to bear in mind the statement occurring in the cross-examination of RW1, wherein, though, there is an unequivocal answer to the suggestion to RW1 qua the factum of the purported juniors to the claimant having filed an OA before the H.P. State Administrative Tribunal and the said forum having directed the reengagement in service of the purported juniors to the claimant while having been done by then in obedience the mandate of a Judicial Forum during does, not either constitute any volitional act of the respondent nor, it results in the formation of the conclusion that any such purported juniors who took to assail their disengagement were, as a matter of fact retained by the respondent at the time contemporaneous to the disengagement of the service of the claimant by the respondent, hence, the respondent infringed the principle of "Last Come First Go". In other words, it can also be said that with the admission in the cross-examination of the claimant that said persons were engaged as per directions of the State Administrative Tribunal, therefore, even if their can be inferred to be juniors to the claimant, yet, when they had come to be, also, disengaged which event led then to file an OA before the State Administrative Tribunal for their reinstatement along with claimant, then, with such disengagement of the aforesaid purported juniors to the claimant by the respondent at the time contemporaneous to the disengagement from service of the claimant by the respondent, in my view, is an indice of non infringement of the principle of 'Last Come First Go' which principle may have been infringed in case the said purported juniors had come to be retained which they were not for the sake of reiteration. Even if they had come to be reengaged in pursuance to the directions of the State Administrative Tribunal, their said reinstatement by the respondent being in obedience by them with the directions of a Judicial Forum and not by their volitional act does not transgress the mandatory statutory provisions, therefore, no right is bestowed upon the claimant to assert parity of treatment with them especially when he did not approach the such Judicial Forum for the redressal of his grievances, which he ought to have done at that stage. Therefore, in my view, on the score of even the purported seniority of the claimant vis-à-vis the aforesaid person for reasons detailed above when they were also disengaged from service at the time contemporaneous to the disengagement from service of the claimant by the respondent, whereas, their retention by the respondent at such a time would have proved contravention of the provisions of law, which, when did not take place renders the application of the principle of 'Last Come First Go', as also, a finding as to, its, contravention unnecessary.

Nonetheless, when specific names of purported juniors to the claimant have been recited in Ex. P1 whose retention in service has been at the time contemporaneous to the disengagement from service of the claimant by the respondent has been insisted to infringe the principle of 'Last Come First Go', hence, when the names occurring in the sworn affidavit, have not even attempted to be shown to be not junior to the claimant by even a suggestion to the claimant to during his cross-examination, nor, evidence by way of adduction of necessary evidence in rebuttal has been adduced, such, persons, have to be construed to be juniors to the claimant whose retention, when not in pursuance to the direction of the State Administrative Tribunal, hence, they are taken to be juniors to the claimant, whose retention at, the time contemporaneous to the disengagement of the claimant from service by the respondent brings about transgression the principle of 'Last Come First Go', hence, invalidates the disengagement from service of the claimant.

> **"25-G. Procedure for retrenchment.**–Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was

the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

It is contended that there is also a infraction of the provisions of section 25-H of the Industrial Disputes Act by the respondent employer which provisions are extracted hereinafter, inasmuch, as subsequent to the disengagement from service the claimant by the respondent it had come to engage fresh hands, now, when there is no proof of notice or offer of reinstatement to him on availability of work for legalizing the engagement of fresh hands by the respondent employer which transgression of the mandatory statutory provisions by the respondent employer entitles the claimant, also, to reinstatement in service. In proof of the aforesaid contention he has relied upon the admission in the cross-examination of RW1 wherein it occurs that since 1994 till date 100 beldars have been engaged by the respondent consequently, hence, when there is no firm proof of offer of reinstatement to the claimant by the respondent and with their being, also, no proof of such persons who were engaged since 1994 till date to be neither, either juniors nor fresh hands, hence, when the best evidence qua the factum of proof of non infraction of the provisions of section 25-H of the Industrial Disputes Act was available with the respondent employer, its non adduction leads to the inference that such persons were fresh hands and when as stated above there is no potent proof of any offer/notice having been given to the claimant by the respondent employer before coming to engage fresh hands their engagement would entitle the claimant, also, to reinstatement. Issues decided accordingly.

"25 (H). Re-employment of retrenched workman.–Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".

**Issue No.5**

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 3 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman and not oust the jurisdiction of this Court to determine the controversy at hand.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground delay.

**Issues No. 3 and 4**

During the course of argument these issue were not pressed before me, hence, these issues decided as unpressed.

**Relief**

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. In the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
22.12.2007

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial Tribunal, Dharamshala.*

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BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT , DHARAMSHALA, DISTT . KANGRA H.P.

Reference: No 86/2003 (RBT 319/04)
Presented on 6.12.2007
Decided on 22.12.2007

Sh. Gurcharan Singh s/o Sh. Sant Ram, vill. Kohra, P.O. Sainthal, Tehsil Jogindernagar, Distt. Mandi, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, H.P. State Electricity Board Electrical Division, Joginder Nagar, Distt. Mandi, H.P. ..*Respondent*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner

For the respondent

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are accepted ad-verbatim.

"1. That the dispute has been referred to this Hon'ble Court to adjudicate upon the point that if the services of the petitioner/claimant have been dispensed with without notice or compensation then as to what benefits will be given to the petitioner.

2. That the petitioner was initially appointed as daily waged beldar in respondentdepartment in the year 1992 (Feb.1992) and worked in the said capacity upto the year July, 2002, and during the service petitioner has completed 240 days of service many time as enshrined in the Industrial Dispute Act, 1947 for the application of Section 25 F of the said Act. It is submitted that the service of the petitioner were retrenched/dispensed with vide verbal orders without complying with the mandatory provisions of the law.

3. That the services of the petitioner have been dispensed with by the respondents without following the proper procedure as laid down by law even when the petitioner had completed 240 days of continuous service under the respondent-department.

4. That the action of the respondents to dispensing with the services of the petitioner without giving any notice Under Section 25 of the Industrial Dispute Act and without paying any compensation is illegal and is liable to be quashed and set-aside. The respondents have violated the provisions of Section 25(VI of the Industrial DisputeAct by engaging fresh person ignoring the claim and seniority of the present petitioner.

5. That while dispensing with the service of the petitioner, respondents have not followed the principles of "Last Come First Go". It is, therefore, most respectfully prayed that this claim petition may kindly be allowed and the petitioner may be reinstated back into service with all consequential benefits in the interest of justice.

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

"1. That no legal or vested rights of the petitioner herein have been violated or infringed by the replying respondents in any way or in any manner so as to entitle him to maintain the application.
2. That the present application of petitioner is barred by limitation and is not maintainable at this belated stage of time when no funds and work are available with the replying respondents.

3. That the application has not been properly instituted/constituted and the same is bad on account of non-joinder & mis-joinder of necessary parties. This being so the application is not maintainable and deserves dismissal.

4. That the petitioner herein is estopped to file and maintain the present application in view of the act, conduct and acquiescence.

**On merit:-**

Para-1. The contents of this para are not disputed.

Para-2. The averments made in this para are partly admitted to the extent that the petitioner was initially engaged as beldar on daily wages basis w.e.f. 1.5.92 against the works which were of

causal nature and remained engaged upto 20.7.2000 with interruption/breaks at his own. The list of mandays worked by him is placed on record as per Annexure RA-I. Thereafter, his services were dispensed with w.e.f. 20.7.2000 by issuing him prior notice of termination by Assistant Engineer, Electrical Sub-Division, HPSEB, Chauntra vide his office letter No.CESD/M-10/2000-2001-428-33 dated 26.6.2000 (copy placed on record as per Annexure –RA-II) when there was no availability of work and funds with the replying respondents. This averment of the petitioner that he has completed 240 days of service is wrong, hence denied. In reply, it is submitted that he never completed 240 days of service ina calendar year preceding the date of his termination. This averment of the petitioner that his service has been terminated by verbal orders is also wrong, hence denied. In reply, it is stated that his services have been dispensed with by issuing him prior notice as is evident from Annexure-RA-II attached herewith. As such, no mandatory provisions of law have been violated by the replying respondents while terminating his service.

Para-3. The contents of this para are wrong, hence denied. In reply, it is submitted that as per submission made herein para supra, the replying respondents have not breached any provision of the law governing the services of daily waged employees. The averments of the applicant are false that he had completed 240 days of service. He never completed 240 days of service as is evident from the list of mandays worked by him.

Para-4. The contents of this para are wrong, hence denied. In reply, it is submitted that the services of the applicant have been dispensed with by issuing him prior notice of termination as per Annexure-RA-II. As such, the replying respondents have not violated the provisions of section -25 (vi) of the Industrial Dispute Act, 1947.

Para-5. In reply, to this para, it is submitted that applicant was not punctual in his services and used to remain absent frequently. The services of the applicant has been dispensed with as per provisions of Industrial Dispute Act, 1947 and the Standing Orders framed by the respondent Board. As such, replying respondents have not violated the principle of "LAST COME FIRST GO". In view of the submission made herein para supra, it is requested that the petitioner is not entitled to any claim as prayed for, therefore, application may please be dismissed and justice be done".

On the pleadings of the parties, this Tribunal framed the following issues:

7. Whether the termination of the petitioner by the respondent w.e.f. 20.7.2000 is illegal and unjustified and in not in consonance with the provision of Industrial Disputes Act, 1946, and clause under section 14.2 of the certified standing orders of the Board, as alleged? ..OPP

8. If issue not (1) proved in affirmative, to what service benefits the petitioner has abandoned the job of his own and services were not terminated by the respondent, if so, its effect? ..OPR

9. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No.1 | Yes |
| Issue No.2 | As per operative part |
| Issue No.3 | Claim petition allowed. |

**REASONS FOR FINDINGS**

**Issues No. 1 and 2**

Since both these issues are interlinked, hence, taken up together for determination. An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.566/2006 titled as HP State Electricity Board Electrical Division Vs. Gurcharan Singh & Anr. which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the ld. counsel for the petitioner belatedly on 6.12.2007, hence I would proceed to decide the matter after allowing the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. P1. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Annexure RAI which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then when their being breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered, then, while believing the view of the respondent then he was engaged against works of purely a casual nature which, nature of engagement of the claimant against such nature of work has also, not been sought to be repulsed by satisfactory evidence to the contrary by the claimant. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Annexure RAI achieve conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits accordingly the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(d) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(e) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(f) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(iii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(iv) two hundred and forty days, in any other case;

(d) for a period of six months, if the workman, during a period of six calendar months worked under the employer for not less than.-

(iii) ninety-five days, in the case of workman employed below ground in a mine; and

(iv) one hundred and twenty days, in any other case.

**Explanation.**-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(iv) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(v) he has been on leave with full wages, earned in the previous years;

(vi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

It is also contended by the claimant that their has been infraction of the provisions of section 25-G of the Industrial Disputes Act by the respondent while disengaging him from service inasmuch, as, their being juniors to the claimant having come to be retained in service which retention of the aforesaid juniors has been voiced to infringe the provisions of section 25-G of the Industrial Disputes Act mandating the principle of 'Last Come First Go' whose transgression by the respondent employer has also when, then, been argued to be rendering the disengagement of the service of the claimant by the respondent to legal. Now, while testing the fact of the aforesaid persons being juniors or not to the claimant at the time contemporaneous to the disengagement from service of the claimant by the respondent it is necessary to bear in mind the admission occurring in the cross-examination of RW1, wherein, there is an equivocal answer to the suggestion to RW1 qua the factum of the aforesaid persons being juniors to the claimant, hence, inclining me to take the view that such admission bears out the assertions in the claim petition of juniors to the claimant having been retained in service by the employer at the time contemporaneous to the disengagement from service of the claimant by the respondent employer of which fact renders the disengagement from service of the claimant to be untenable.

**"25-G. Procedure for retrenchment.**–Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

It is contended that there is infraction of the provisions of section 25-H of the Industrial Disputes Act by the respondent employer which provisions are extracted hereinafter, inasmuch, as subsequent to the disengagement from service the claimant by the respondent it had come to engage fresh hands when there is no proof of notice or offer of reinstatement to him on availability of work for legalizing the engagement of fresh hands by the respondent employer when transgress of the mandatory statutory provisions by the respondent employer entitle the claimant also to reinstatement in service. In proof of the aforesaid contention he has relied upon the admission in the cross-examination of RW1 wherein it occurs that since 1992 till 100 beldars have been engaged by the respondent consequently, when there is no firm proof of offer of reinstatement to the claimant by the respondent and with their being, also, no proof of such persons who were engaged since 1992 till date to be neither, eitherjuniors nor fresh hands, hence, when the best evidence qua the factum of proof of non infraction of the provisions of section 25-H of the Industrial Disputes Act was available with the respondent employer, its non adduction leads to the inference that such persons were fresh hands and when as stated above there is no potent proof of any offer/notice having been given to the claimant by the respondent employer before coming to engage fresh hands their engagement would entitle the claimant, also, to reinstatement. Issues decided accordingly.

**"25 (H). Re-employment of retrenched workman.–**Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".

**Relief**

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. In the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
22.12.2007

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial Tribunal, Dharamshala.*

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IN THE COURT OF SHRI SURESHWAR THAKUR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No. 315/02

Presented on: 24.9.2007

Decided on: 12.11.2007

Sh. Neeraj Kumar S/o Shri Govind Singh Vill. Ner, Post Office Majharan, Tehsil, Jogindernagar, District Mandi, H.P. …*Petitioner.*

*Versus*

The Resident Engineer, Bassi Power House, H.P. State Electricity Board, Joginder Nagar, Distt. Mandi. ..*Respondent.*

ORDER/AWARD

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

12.11.2007 Present: None for the parties.

The case has been called twice or thrice. But none appeared for the parties. It is 11.30AM. Be put after lunch.

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-Cum-Industrial*
*Tribunal, Dharamshala, H.P.*

12.11.2007 Present: None for the parties.

The case has been called twice or thrice. But neither the parties nor their counsels appeared. It is 3.30 P.M. Hence the case is dismissed in default. The Reference answered accordingly. The file after its due completion be consigned to the record room.

Announced
12.11.2007

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-Cum-Industrial*
*Tribunal, Dharamshala, H.P.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P.**

Reference: No 123/05
Presented on:8.9.2005
Decided on 22.12.2007

Sh. Dev Raj S/o Shri Gorakh Ram, R/o VPO Dev Prarhi (Sulyali), Tehsil, Nurpur, District Kangra, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Nurpur, Tehsil, Nurpur, District Kangra, H.P. …*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Navneet Gupta, Vice Adv. of Sh. Naresh Kaul, Adv.
For the respondent : Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

> "Whether the termination of services of Shri Dev Raj S/o Shri Gorkh Ram workman by the Executive Engineer, H.P.P.W.D. Division, Nurpur, District Kangra, H.P. w.e.f. May, 1992 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. That the applicant is a permanent resident of address mentioned above, and was engaged by the respondent department i.e. HPPWD Division Nurpur, on July 1985 at HPPWD, Sub Division, Nurpur and was illegally retrenched in the year May, 1992. Then he filed an Original Application along with other retrenched (labourers) before the Hon'ble H.P. State Administrative Tribunal at Shimla, which was numbered as Original Application No.575/1991 titled as Uttam

Chand and others versus State of Himachal Pradesh. On 7.5.1991, the following order was passed by the Hon'ble Tribunal at Shimla. "Notice pending admission returnable on July 12, 1991 the Learned Additional Advocate General waives service of notice on behalf of the respondents. The reply, if any, be filed on or before July 8, 1991.

In the meanwhile it is ordered that since the disengagement of the applicants is prima facie illegal, they shall be reengaged in the same capacity and at the same place forthwith. The applicants may report for duty on or before May 27, 1991 to the Executive Engineer, HPPWD, Jassur, Public Works Division at Nurpur, District Kangra (Respondent No.2) in writing along with the copy of this order, which shall be supplied dasti to the applicant and on receipt thereof, the said Executive Engineer, shall comply with this order of the Tribunal. The question of back wages is left open the determined at the time of final disposal of the application."

In compliance to the above orders, the applicant along with others joined their duties, thereafter the original application was withdrawn, but again in the year 1992 the services of the applicant were retrenched with the assurance that as and when the work would be available, they will again reengage him with seniority . But it would be pertinent to submit here that, the services of the juniors to the applicant were not terminated. Moreover, the fresh appointments are made by the HPPWD in the State. The applicant had put in 240 days in 12 calendar months before the date of retrenchment. In fact the applicant had worked with the department up to 1992.

2. That at Nurpur Division of HPPWD an average of more than 1000 workers were engaged for many years.

3. That the Nurpur Division of the HPPWD is involved in construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. patch work of matelled road, New Roads to Village levels, widening of roads, landslides clearance during monsoon seasons etc.

4. That the above mentioned work is performed by the HPPWD throughout the year and continuously for years together and therefore, the nature of work is an unending process. Now the Government has introduced new policies wherein every village shall be connected with the road as per new directions from Central Government and State Government. Thus, there had been regular work available for the applicant as preparation, widening of road, maintenance, patching (Takkis) is an integral part of the entire chain of work performed by the HPPWD.

5. That the employer, Executive Engineer, Nurpur Division, under mistaken notion and ignorance of law in this regard, terminated the services of the applicant in the year Feb, 1990 and from the date of illegal termination applicant is continuously visiting the office of the respondent as well as the office of subordinate of the respondent, further the applicant till date has neither been gainfully employed to any of the Government/Semi Government/Private concern institution nor having his own business or work & no work is available in the nearby vicinity.

6. That after the oral termination of services of the applicant by the employer concerned, applicant made various verbal requests by visiting number of times to the HPPWD Division as well as Sub Division, and every time it was assured by the respondent's department, that the applicant will be engaged after 3 or 4 months. But when the applicant did not hear anything from the side of department, the applicant written letters to the Department regarding reengagement on daily wage basis, but of no avail. The department even has not considered/ entertained those applications. A resolution on behalf of retrenched workers was also sent to the Assist. Registrar to the Hon'ble H.P. State Administrative Tribunal, Shimla vide postal registry no. 4112 on 29.04.2002 to take action against the respondent. Moreover, the applicant & similarly situated workman had

also made representation on 7.8.2002 to the Ld. Finance Secretary to the Govt. of Himachal Pradesh, the same has not been decided till date.

7. That for the purpose of seniority, the applicant and other similarly situated persons who were working on daily wages basis, the whole of the HPPWD constitute one unit and the Principal of last come first go etc. and giving benefits regarding regularizing etc. the same is to be treated as such.

8. That on account of sheer poverty & illiteracy as such, Applicant was not able to pursue his case before appropriate authorities under the Industrial Dispute Act, 1947 as he did not have money even to visit Shimla, where the Labour Court was situated. Besides this the applicant was also requesting the officials of the Department to engage his services but he was put off on the one pretext or the other that whenever the disengaged workers will be engaged his services would be taken but surprisingly even after passing more than ten years, the services of the applicant have not been taken back. It is pertinent to mention here that the persons who are juniors to the applicant were reengaged, one of them is Smt. Kusum Lata wife of Shri Roshan Lal, resident of Village and Post office Sulyali, Tehsil Nurpur, District Kangra, H.P. is retained by the Engineer-in-chief vide its letter No. 3058-61, dated 18.1.2000 and is working under HPPWD, Sub-Division, Nurpur. The names of other junior shall be disclosed later on, for which the applicant reserved his right to do so. The Vice President of Him Shakti PWD Karamchari Sangh(Registration No. 73) (Bhartiya Majdoor Sang) Kangra District and Divisional President of Himshakti, PWD Karamchari Sangh, 47/9, Bangla Muhala, Mandi. H.P. then served a legal notice under section 80 CPC through Shri M.S. Jamwal, Advocate, BML Associates Advocates, Nurpur on 4.5.2002 and in response to which Engineer-in-chief vide its letter No. PWD(Misc. N) (SU)-1895-96 dated 22.5.2002 asked for the para wise comments in this regard, copies of the same were also supplied to the respondents while submitting the demand notice before the Conciliation Officer and the same facts were not denied by the respondent.

9. That the action of the employer in orally terminating the services of the applicant clearly violates the provisions of Section 25-F of the Industrial Disputes Act, 1947. The employees were legally bound to serve one month's prior notice upon the applicant, but the employer have straightway failed to comply with the well settled principles of law. Apart from this, the employers were also bound to follow the provisions of Section 25-G and 25-H of the Industrial Disputes Act. The applicant could not have any grievances if his services along with other similarly situated and juniors were terminated but the employers adopted the pick and choose policy which is in contravention of the law, provisions and various pronouncements of the Hon'ble Apex Court.

10. That Hon'ble Supreme Court in one of the important case i.e. AIR 1980 SC. 115 para 40 has held that principles of 'Last Come First go' can not be violated and have to be adhered to. In another landmark judgment is reported 1997 (1) LLJ 576 titled as Central Welfare Board Versus Anjali Bepari (MS), The Apex Court has held that principles of 'Last come Fist Go' have to be complied with. Thus the illegal action of the Employer cannot be legalized. The employer have grossly and palpably violated the provisions of Articles 14 and 16 of the Constitution of India. The right of the applicant as enshrined in Article 21 of Constitution has also been infringed, non compliance of which have put the applicant at the verge of starvation. Hence the action of the employers is arbitrary, discriminatory and unconstitutional which is liable to be declared as such.

11. That the employers should have been issued one months prior notice or salary in lieu thereof. The Hon'ble Supreme Court in various judgments has held that requirement to pay retrenchment compensation is sine qua non for valid order of termination. Few of the judgments clearly established the illegal action of the employers, are reproduced hereinafter as under:-

i) Hindustan Steel Limited Versus Presiding Officer (AIR 1997 SC Page 31)

ii) L. Robert D'Souza Versus Executive Engineer, Southern Railway (AIR 1982 SC page 854)

iii) SAntosh Gupta Versus State Bank of Patiala) (AIR 1980 SC Page 1219) Hence the action of the employers in orally terminating the services of the applicant and without paying any retrenchment compensation is totally against the well settled provisions/principles of law. The illegal action therefore, has rendered itself invalid, in operative and ineffective in the eyes of law and is liable to be declared as such. The Ld. Labour Commissioner (H.P.) vide letter dated 27th August, 2005 has referred the matter to this Hon'ble Court to adjudicate "Whether the termination of services of Shri Dev Raj S/o Shri Gorkh Ram workman by the Executive Engineer, H.P.P.W.D. Division, Nurpur, District Kangra, H.P. w.e.f. May, 1992 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

12. Thus the termination of the applicant is otherwise bad, because the respondents appointed/engaged many juniors persons although the services of the applicant has been illegally terminated without following the procedure prescribed under section 25-F and Section 25-G & 25-H of the Industrial Dispute Act, 1947 therefore, the impugned retrenchment of the applicant is void ab-initio and he is entitled to be reinstated in service with full back wages and declaration for continuation in service which if not done would result into miscarriage of justice. Moreover, as per the Mool Raj Upadhayaya's Case judgment passed by the Hon'ble Apex Court and followed by our own High Court as well H.P. State Administrative Tribunal in various cases, the applicant is entitled to be regularized after completion of 10 years service with all consequential benefits with interest @ 18% per annum.

It is, therefore, most respectfully prayed that the termination of the applicant by the respondent may kindly be declared null and void and he may be granted all consequential benefits as also the other allowances, salary besides being other benefits and regularization after 10 years of service with seniority and back wages along with interest @ 18% per annum available under law, and other relief(s) to which applicant may be found entitled to, in the peculiar circumstances of the case and justice be done." The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

**"Preliminary objection**

1. That the present petition is barred by way of res-jurisdicata and also under order 2, Rule 2 CPC. As the petition had filed OA No.575/1991 in the H.P. Administrative Tribunal in respect to the same cause of action.

2. That the present petition has been filed after about 16 years from the date of alleged termination, as such it is barred because of delay and laches.

**On Merit**

1. That the contents of para no.1 of the petition are admitted to the extent that the petitioner had been working as labourer with the department during the said period. But it is incorrect that he was illegally retrenched in the year 1990. However, it is admitted that the said interim order was passed by the Administrative Tribunal. It is incorrect that the applicant had joined his duty as per aforesaid order with the department. It is also incorrect that the services of

the petitioner were terminated again in the year 1992 and that the persons junior to him were retained. It fact the petitioner did not ever join his duty after 1990. More over the averments made in this paragraph are in variance to the reference made by the State Government. The petitioner alleges termination in the year 1992, where as the date of termination as per the reference is March, 1990.

2. That the contents of para No.2 of the petition are wrong, hence denied, only few persons were engaged by the department in Nurpur Division, H.P. PWD, Nurpur during the relevant years, those too with the order of the Hon'ble Administrative Tribunal.

3. The contents of para no.3 of the petition are admitted.

4. The contents of Para No.4 of the petition are wrong, hence, denied. It is incorrect to suggest that regular work was available with the department during all the years. It is also correct that Govt. has introduced new policies where in every village having population more than 250 shall be connected with road as per new direction from central Govt. under PMGSY scheme These schemes are to be executed through contract with five year maintenance by the contractor. As per guide liens of PMGSY these schemes cannot be implemented by deputing departmental labour. So no new labour can be enrolled for these schemes. The existing labour with Nurpur Division is sufficient for carrying out the maintenance works on the roads of the Division.

5. The contents of Para no.5 of the petition are wrong, hence denied. The service of the application were not terminated by the department, moreover the applicant has come to the court after 15 years from the date of alleged termination. It is also incorrect that the applicant was not gainfully employed during the years. It is incorrect that the applicant has been visiting the office of the subordinate officers of the respondent from the date of alleged termination for seeking reemployment as labour.

6. The contents of Para no.6 of the petition are wrong, hence denied. The petitioner had not even made any oral or written request to the department. It is denied for want of knowledge that the retrenched workers had made any representation to Industrial Tribunal vide postal registration No.4112 dated 29.4.2002. However the representation if any made by the petitioner in year 2002 was also barred by way of the delay and laches.

7. The contents of Para No.7 of the petition are wrong, hence denied. It is in correct to suggest that the whole of the HPPWD, department constitute one unit for the purpose of section 25(G) of the Industrial Disputes Act.

8. That the contents of Para No.8 of the petition are wrong, hence denied. It has been stated by the petitioner i.e. Smt. Kusam Lata was engaged in the year 2000 by the department in violation of provision of the Industrial Act. It may be stated that she has been engaged after about ten years from the date of alleged termination of the petitioner that too as a store Clerk. She has been engaged in different category than that of the petitioner.

9. That the contents of Para No.9 of the petition are wrong, hence denied. The provision of section 25-F, 25-G, 25-H of the Industrial Dispute Act have not been violated by the Department in any manner.

10. That the contents of Para No.10 of the petition are wrong, hence denied. The respondent has not violated any provision of law as alleged by the petitioner.

11. That the contents of the Para No.11 of the petition are wrong, hence denied. The petitioner left the job of his own, as such section 25-F, 25-G , 25-H have not violated in any manner.

12. The contents of the Para No.12 are wrong, hence denied. It is, therefore, respectfully prayed that the petition may kindly be dismissed being devoid of any merit."

The claimant filed a rejoinder to the reply of the respondent and controverted the controversial contentions in the reply of the respondent while reasserting the averments in the claim petition.

On the pleadings of the parties, this Tribunal framed the following issues:

1. Whether the disengagement from the service of the claimant by the respondent is in accordance with law? …OPP
2. If the above issue is in affirmative to what relief of service benefits the petitioner is entitled? ..OPP
3. Whether the claim petition is barred by delay and laches? OPR
4. Whether the claimant willfully abandoned his job? OPR
5. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No. | 1 No |
| Issue No.2 | As per operative part |
| Issue No.3 | No |
| Issue No.4 | No |
| Issue No.5 | Claim petition allowed. |

**REASONS FOR FINDINGS**

**Issues No. 1, 2 and 4**

Since all these issues are interlinked, hence, taken up together for determination.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then, when with their being even breaks in

the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable otherwise also being wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered also when there is no conclusive evidence to believe the view of the respondent that he was engaged against works purely casual nature existed in period of time, while intermittently ceasing the engagement of the claimant on such cessor of works hence, the intermittent cessor in the engagement of the claimant under the respondent is to be imputed to his abstention from work and not to only intentionally administered fictional illegal breaks. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Ex. RW1/A achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant. The plea of abandonment of job by the claimant, as, raised by the respondent, is, untenable as, no evidence qua the factum of the claimant having worked elsewhere or his having such financial resources so as not to require his job, which, affirmative evidence in case adduced would alone have bolstered such a conclusion, its, dearth, obviously, renders the plea unsustainable.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(g) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(h) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(i) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness orauthorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(e) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(v) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(vi) two hundred and forty days, in any other case;

(f) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(v) ninety-five days, in the case of workman employed below ground in a mine; and

(vi) one hundred and twenty days, in any other case.

**Explanation.-** For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(vii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(viii) he has been on leave with full wages, earned in the previous years;

(ix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since the claimant has also asserted the infraction of the principle of 'Last Come First Go' by the respondent while disengaging him from service. In proof of the said infraction it is necessary to bear in mind an admission in the cross-examination of RW1 inasmuch as, therein their occurs an equivocal statement in the cross-examination of RW1 qua the factum of certain persons stated/averred by the claimant to be juniors to him and who is equally equivocal qua the factum of their being continued to be retained by the respondent at the time contemporaneous to his disengagement, which, equivocation brings forth an infraction of the principle of 'Last Come First Go'. The occurrence of an equivocal statement on the said facets during the cross-examination of RW1 disclosing the fact of the said persons may or may not being juniors to the claimant is indicative of a tacit admission of the said persons being juniors to the claimant, as also, qua the factum of their having been retained at the time contemporaneous to the disengagement from service of the claimant by the respondent, a fact inferable not only from the said equivocal statement occurring in the cross-examination of RW1, but, also from the lack of adduction of the best evidence by the respondent demonstrative of the seniority of the claimant vis-à-vis the said juniors to the claimant on qua their retention in service by the respondent at the time contemporaneous to the disengagement of the claimant, which lack of best evidence despite its being in possession of the respondent also brings to the fore the fact that as a matter of fact the said persons were juniors to the claimant, hence, their retention highlights contravention of the principle of 'Last Come First Go'. Therefore, the disengagement from service of the claimant is illegal. Issues decided accordingly.

**Issue No.3**

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and

latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 15 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay.

**Relief**

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement and when the petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
22.12.2007

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial*
*Tribunal, Dharamshala.*

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IN THE COURT OF SHRI SURESHWAR THAKUR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

Reference: No. 100/05
Presented on: 13.7.2005
Decided on: 8.1.2008

Smt. Hema Devi W/o late Shri Om Parkash workman Vill. Burli Kothi, P.O. Paprola, Tehsil, Baijnath, District Kangra, H.P. …*Petitioner.*

*Versus*

The Principal, Saraswati Vidya Mandir, High School, Paprola, Tehsil, Baijnath, District Kangra, H.P. ..*Respondent.*

ORDER/AWARD

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

"Whether the termination of services of Smt. Hema Devi W/o Late Shri Om Parkash workman by the Principal, Sarswati Vidya Mandir, High School, Paprola, Tehsil, Baijnath, District Kangra, H.P. w.e.f. 7.11.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation Smt. Hema Devi is entitled to?"

8.1.2008 Pr. None

The case has been called twice or thrice. But none appeared on the behalf of petitioner. It is 11.30AM. Be put after lunch.

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-Cum-Industrial*
*Tribunal, Dharamshala, H.P.*

8.1.2008 Present: Above

The case has been called twice or thrice. But none appeared on behalf of the petitioner. It is 3:30 P.M. The same case has been dismissed in default. The reference answered accordingly. The file after due completion be consigned to the record room.

Announced
8.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-Cum-Industrial*
*Tribunal, Dharamshala, H.P.*

———

BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P.

Reference: No 469/2004
Presented on:
Decided on 18.1.2008

Sh. Salig Ram S/o Sh. Roshan Lal Vill. Jol, P.O. Dangar, Tehsil, Ghumarwin, Distt. Bilaspur, H.P. ..*Petitioner.*

*Versus*

Executive Engineer, HPPWD, Division Ghumarwin, Bilaspur …*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh.R.L. Kaith, Adv.

For the respondent : Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

"Whether the termination of services of Shri Salig Ram S/o Sh. Roshan Lal, workman by the Executive Engineer, H.P.P.W.D., Division, Ghumarwin, District Bilaspur, H.P. w.e.f. Jan. 1999 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him retained by the department is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. That the applicant was engaged as a labourer on daily wage basis under Bharari Sub Division initially in April, 1997 and he worked upto Feb. 98 and worked for more than 240 days in twelve calendar months prior to his oral disengagement. The persons who were working with the petitioner and were juniors to him are still working with the respondent but the services of the petitioner has been disengaged.

2. That the seniority of Daily wage workers is being maintained at Divisional level and a number of other junior persons are still working with the department. That the relations of junior persons to the petitioner is arbitrary in nature violative of mandatory provisions of law, which action of the part of the respondent is wrong, illegal and arbitrary hence liable to be set aside by directing the respondents to reengage the petitioner with all consequential benefits.

**Prayer**

Keeping in view the facts and circumstances narrated above it is prayed that the respondents be directed to reengaged the service of the petitioner with consequential benefit."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:-

"PRELIMINARY OBJECTION:-

1. That the present complaint is not maintainable in the present form since the petitioner was engaged a beldar (unskilled labourer) under the Scheme of Employment Assurance Scheme only for 100 days. Hence the same is liable to be dismissed.

ON MERIT:-

1. That the contents of para No.1 of the statement of claim is admitted to the extent that the petitioner was engaged as a beldar on daily wags in the year of April 1997. It is submitted that the petitioner was engaged only for 100 days under the Scheme of Employment Assurance scheme. The outline and objective of scheme are annexed as annexure R-1. Neither the petitioner was engaged full time labourer nor he has completed 240 days in 12 calendar months prior to his disengagement. The detail mandays annexed as R-2. Since the engagement of the petitioner was only for 100 days, than the question of completion of 240 days does not arise at all. The allegation regarding the junior are working with the department are denied being incorrect.

2. That the contents of the para No.2 of statement of claim are denied being incorrect. When the engagement of the labourers only for hundred days under the Scheme of Employment Assurance Scheme, then the question of the seniority regarding not sustainable in the eyes of law.

3. That the contents of the para No.3 of the statement of claim are denied, being incorrect. When the engagement of the petitioner is wholly come in to the preview of the Employment Assurance Scheme for 100 days then the question of disengagement of petitioner is arbitrary in nature does not arise at all.

PRAYER

It is therefore respectfully prayed that the statement of claim of petitioner may kindly be dismissed with costs in the interest of justice."

The claimant contested the reply and filed a detailed rejoinder. The contents of rejoinder as furnished by the claimant to the reply are reproduced ad-verbatim hereinafter:-

**"Reply to the Preliminary Objections:**

1. Para No. 1 of the objection is wrong hence denied. The complaint is very much maintainable.

**Parawise Rejoinder.**

1. Para No.1 of the reply is wrong hence denied. The corresponding para of the petition is correct and reaffirmed. Assuming the petitioner has not completed 240 days in 12 preceeding calendar months prior to his disengagement, the persons who were junior to him are still working with the respondent.

2. Para No.2 of the reply is wrong hence denied. The corresponding para of the claim is correct and reaffirmed.

3. Para No.3 is also wrong hence denied. Corresponding para of claim is correct and reaffirmed.

**Prayer**

It is prayed that the claim of the applicant/petitioner may kindly be allowed in the interest of justice."

Since the perusal of this case it appears that there is no issues struck though ordered by this Court to be so struck, yet, evidence had come to be adduced on 14.9.2005. Nonetheless, since this Reference is received from the Competent Authority and it is in the form of the issue. It is deemed fit that the Reference itself be treated as an issue and findings be given on it, hence, the Reference as extracted hereinabove is to be considered as an issue and findings on it are as under:

No
No Service benefits
Claim petition dismissed. Reference answered accordingly.

REASONS FOR FINDINGS

In proof of the assertions made by the claimant in the claim petition the claimant has stepped into the witness box and during the course of his examination-in-chief has testified in a

manner so as to corroborate the facts as averred in the claim petition. However, the solitary uncorroborated and bald testimony of the claimant bald as it is, insufficient to convince this Tribunal that the assertions as made by the claimant in the claim petition can be taken to be affording conclusive evidence of the facts as recited in the claim petition and as deposed solitarily by the claimant.

On the other hand the respondents in support of their contentions in their reply have depended upon the testimony RW1. Primarily and initially, it is necessary to at once advert to the requirement of law necessary for resting the controversy as to whether the claimant has or has not rendered the necessary period of qualifying service, as, also, whether, then the claimant was entitled to the benefit of the statutory provisions. So also, in case the mandatory statutory provisions have come to be violated, then whether, the claimant is entitled to any relief from this Tribunal. The statutory provision relevant to determine the legality of retrenchment of the claimant, as conversely contended to be not tenable and to be tenable, is, the one engrafted in Section 25 (F) of the Industrial Disputes Act, whose provisions are extracted hereinafter and on a perusal of its provisions, it, becomes manifestly clear that the necessary statutory period of qualifying service as envisaged is to be compulsorily rendered by a workman under the employer, for, him to assert that clause (a) and (b) of the Section 25 (F) of the Industrial Act, then, applicable to him have come to be violated. Since, the import of the term "continuous service" existing under Section 25 (F) is not defined in the said section, hence, when the definition of the term "continuous service" is contained in section 25 (B) of the Industrial Disputes Act hence, when the, said provisions have also to be borne in mind, therefore, they are also extracted hereinabove. On a perusal of the said provisions it emerges that the period of "continuous service" is a period of 12 calendar months preceeding the retrenchment of the workman. Now, in the light of the period of service performed by the claimant under the respondents as borne out by Annexure R-1 which has been prepared during the discharge of public duties by a public functionary and to which a presumption truth is attached which presumption may have been displaced in case potent evidence is rebuttal had been adduced, therefore, when no evidence potent enough to displace the presumption of truth enjoyed by it, has been adduced, accordingly, it assumes conclusiveness, in so far as, in it depicting the number of days of service performed by the claimant under the respondent is concerned. Being so, while, bearing in mind the definition of term "continuous service" existing in Section 25 (B) of the Industrial Disputes Act, being service, for, 240 days in the 12 calendar months preceeding the retrenchment of workman, if, one glances at the Annexure R-1 for the purpose of computation of the period of rendition of "continuous service" by the claimant under the respondents and whether the service rendered by the claimant has met the requirement of law, on the, computation as required to be statutorily made from the date of disengagement of the claimant being, January, 1999 and the 12 calendar months preceeding the disengagement of the claimant, however, I find that on the adoption of formula for the computation of fulfillment of rendition of the minimum qualifying service by the workman under the respondents the same remains unfulfilled, as, in the 12 calendar months preceeding the disengagement of the claimant, he has not worked continuously for 240 days under the respondent. Hence, with the mandate of law being rendition of service for 240 days in the 12 calendar months preceeding his disengagement, not more, and not less. Therefore, viewed in the light of the above interpretation to the requirement of the provision of section 25-F of the Industrial Disputes Act, while laying the rule of the necessity of the employer serving retrenchment notice or payment of retrenchment compensation in lieu of such notice, while the workman having come to prove to have rendered "continuous service" under the respondent which phraseology of "continuous service" as occurring in section 25(F) of the Industrial Disputes Act, whose provisions are extracted hereinafter has come to be not defined in section 25-F of the Industrial Disputes Act, but, has come to be defined in section 25-B of the Industrial Disputes Act whose provisions are also extracted hereinafter and with the said period of "continuous service" as defined in the provision of section 25-B of the Industrial Disputes Act signifying service by a workman for a period of 240 days under his employer in the 12 calendar months preceeding his

disengagement then, in the instant case when the services rendered by the workman under his employer, is, not for a period of 240 days in the 12 months immediately preceeding his disengagement, such rendition of service for a period less than as ordained by law, connotes lack of performance of qualifying period of service by the claimant under the respondent. Hence, it cannot be said that any illegality was committed by the respondent while disengaging the workman.

**25F. Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(j) the workman has been given one month's notice in writing indicating thereasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(k) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(l) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B). Definition of continuous service.**-For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(g) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(vii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(viii) two hundred and forty days, in any other case;

(h) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(vii) ninety-five days, in the case of workman employed below ground in a mine; and

(viii) one hundred and twenty days, in any other case.

**Explanation.**-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(x) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xi) he has been on leave with full wages, earned in the previous years;

(xii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

The claimant had also contended with great fervor in the claim petition that his services came to be disengaged in violation of principle of 'Last Come First Go' inasmuch, as, the certain persons named junior continued to be retained by the respondents at the time contemporaneous to the disengagement from service of the claimant by the respondent, hence, contravening the principle of 'Last Come First Go' as envisaged in the provisions of section 25-G of the Industrial Disputes Act whose provisions are extracted hereinafter, hence, invalidating the disengagement from service of the claimant by the respondent. Now, with the repudiation by way of reply of the respondent furnished to the said paragraph of the statement of claim revealing that the persons named as juniors to the claimant in the corresponding para of the statement of claim, though, denied not to be juniors, yet, their reengagement in service having been contended to be in pursuance to compliance by the employer with the direction of a Judicial Forum which act of the respondent in reengaging the service of the persons juniors to the claimant does not constitute any volitional act on the part of the respondent, so as to say that there was any intentional infraction of the principle of 'Last Come First Go', for, the following reasons:-

a. That admittedly the services of the juniors to the claimant was also disengaged at the time contemporaneous to the disengagement from the service of the claimant by the respondent, there was obviously, no "retention" of such juniors by the respondent/employer which retention of the said juniors at the time contemporaneous to the disengagement from service of the claimant by the respondent would have transgressed the principle of 'Last Come First Go'.

b. That when the services of the juniors to the claimant were dispensed with by the respondent employer at the time contemporaneous to the disengagement from service of the claimant, hence, such act manifesting fair play of the employer towards all workmen under, the, respondent/employer, therefore, as when the juniors to the claimant had come to mitigate their grievance inasmuch, as they approached the competent Judicial Forum with an appropriate application in accordance with law with relief of reinstatement which was ultimately granted in their favour, and its having been complied with by the respondent/employer in their having coming to reengage the services of the said persons, the claimant too, at that stage when he could have done likewise his having omitted to do so can be construed to have abandoned his rights, as, vested in by law, hence, their was no discrimination by the respondent/employer in not reengaging his services, when, obviously, their was no direction for his reinstatement in service by the respondent/employer as was the case qua his juniors. Besides, when the as already discussed hereinabove the Summon Bonum/anvil for testing the validaty of disengagement from service of the claimant inasmuch, as, their was a purported infraction of the principle of 'Last Come First Go' by the employer, is the intentional retention of purported juniors to him at the time contemporaneous to his disengagement by the employer respondent, which volitional intentional act of the employer has been demonstrated by the aforesaid discussion to have not occurred, hence, oust the applicability of the Rule of 'Last Come First Go' and consequentially, its, infringement. Reference answered accordingly.

**"25 (H). Re-employment of retrenched workman.—** Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".

**Relief**

Claim petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced:
18.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial*
*Rajesh Tribunal, Dharamshala, H.P.*

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BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT , DHARAMSHALA, DISTT . KANGRA H.P.

Reference: No 109/2005
Presented on : 13.7.2005
Decided on : 18.1.2008

Sh. Bahadur Singh S/o Sh. T.R. Bhatia Vill. Lehar, P.O. Ansui Tehsil, Shahpur, District Kangra, H.P. ..*Petitioner.*

*Versus*

1. Senior Superintending Engineer, Civil Construction H.P.S.E.B. Circle, Dharamshala, District Kangra, H.P.

2. Executive Engineer, Civil Construction Division, Palampur, District Kangra, H.P.

3. Executive Engineer Construction Division (Kohli Project), Shahpur, Distt. Kangra, H.P. ..*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Aman Guleria, vice, Adv.

For the respondent : Sh. Pradeep Dogra, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication from the competent authority.

"Whether the termination of services of Shri Bahadur Sing S/o Shri Ram Bhatia workman by (1) Senior Superintending Engineer, Civil Construction H.P.S.E.B. Circle, Dharamshala,

District Kangra, H.P. (2) Executive Engineer, Civil Construction Division, Palampur, District Kangra, H.P. (3) Executive Engineer Construction Division (Kohli Project), Shahpur, Distt. Kangra, H.P. w.e.f. 20.2.1991 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. That the petitioner joined the service in GAJ PROJECT as a Beldar on 21.9.1987 and worked there upto 19.1.1988 i.e. 116 days (Annexure A1).

2. That thereafter the petitioner worked as helper w.e.f. 10.4.1989 to 20.4.1989 vide muster rolls number 1666; 21.4.89 to 20.5.89 vide muster roll number 63; 21.5.89 to 11.6.89 vide muster roll number 129 and from 23.6.89 to 3.7.89 vide muster roll number 218, from 23.6.89 to 3.7.89 vide muster roll number 218, total 73 ½ days (Annexure A2).

3. That the petitioner worked and served the respondents as supervisor w.e.f. 23.11.1990 to 20.12.1990 (muster roll number 597); 21.12.90 to 20.1.91 (muster roll number 660, 21.1.1991 to 20.2.1991 (muster roll number 726) = 88 days (Annexure A3).

4. That as a whole the petitioner has served the respondents in different qualities for 277 ½ days and after that also the petitioner has served the respondents upto October, 1993 and also completed 90 days initially in the service without interruption and also completed more than 240 days as mentioned above.

5. That without any prior notice the respondents have dispensed the service of the petitioner and the respondents have also assured the petitioner that the respondents will call the petitioner very soon but in vain.

6. That the petitioner has discharged his duty diligently, honestly and to the best of his ability and to the satisfaction of the respondents and the work done by the petitioner has also been appreciated by the respondents.

7. That the service of the petitioner has been dispensed with without complying the provisions of law laid down under the Act and the procedure thereof. The service has been dispensed arbitrarily which is against law and all the cannons of natural justice. Neither any notice has been served upon the petitioner nor he has been given hearing by the respondents. The termination is void, invalid and inoperative.

8. That the petitioner has represented and requested number of times to the respondents to regularize his services from the back date and to pay the wages, to give seniority and other benefits from the back date but they have not taken any positive step in this regard. Copies are annexed as ANNEXURE-A/4 TO A8.

9. That on 10.4.02, 30.4.02 and 22.3.03 there was a correspondence of the respondents interse with respect to the service etc. of the petitioner but despite that the petitioner has not been given any relief by the respondents. Copies of correspondence interse the Department attached herewith, the copies of correspondence are ANNEXURES A/9 TO A/11.

10. That the petitioner is entitled for the following awards and relief:-

a) Continuity of service from the date on which the service of the petitioner has been dispensed;

b) That the petitioner is entitled for the back wages with interest, from the date on which his service was dispensed with/terminated;

c) The petitioner is also entitled for the regularization of service and due promotion with seniority benefits;

d) That the petitioner is entitled for all the service benefits from the back date;

e) Any other relief which this Hon'ble Tribunal deems fit and proper as per the nature and circumstances of the case.

It is, therefore, respectfully prayed that the relief claimed in this petition may kindly be granted to the petitioner and any other relief may also be granted which this Hon'ble Tribunal deems fit and proper in the interest of justice and fair play."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

"PRELIMINARY OBJECTIONS:-

1. That the present claim petition is not maintainable as the same is wholly misconceived, groundless, unsustainable in the eyes of law.

2. That the petition is baseless and flagrant abuse of process of law to harass, blackmail and to get undue advantages from the replying respondents.

3. That the petitioner has no cause of action and locus standi to initiate the present proceeding against the replying respondents as this belated stage of time.

4. That the present petition is frivolous and vexatious and liable to be dismissed.

5. That the petitioner is estopped by his own act, conduct and acquiescence to file the present frivolous and vexatious complaints against the replying respondents and the petition is liable to be dismissed.

6. That the petitioner has concealed the true material facts from this Hon'ble Tribunal and has not approached the Tribunal with clean hands.

7. That the claim put in by the petitioner are barred by limitation. This being so the claim petition is not maintainable and deserves dismissed.

**Para wise reply to the claim/demand charter:-**

1. That the contents of paras 1 to 3 of the petition are partly admitted and partly denied. The detail of number of days worked under Gaj Construction Division in different Sub-Divisions are enclosed herewith as annexure R-1.

2. That the contents of para 4 of the petition are wrong, false, incorrect, baseless and hence denied. It is submitted that as per standing instruction the workers is required to serve

continuously 240 days in the year, but in the present case the applicant petitioner has not fulfilled/qualified for the same and he can't get the benefit of the same. The petitioner has worked only for 286 days in five years i.e. 1987 to 1991 and has never completed 240 days in a calendar year as he has worked only fro 119 days in 1987, 14 ½ days in 1988, 73 ½ days in 1989, 38 days in 1990 and only 51 days in 1991 detail as per annexure R-1.

3. That the contents of paras 5 & 6 of the petition are wrong, false, incorrect and hence denied in toto. The petitioner himself has not come to the duty/office without any intimation to the respdts/deptt. Moreover he was not temporary workman of the HPSEB as per standing order of the HPSEB notified vide Secretary office order No.HPSEB(SECTT/LWO- 4/85(B)109654-823 dated 11.7.85 extract attached as per annexure R-2.

4. That the contents of these para 7 of the petition are altogether wrong false, incorrect and hence denied in toto. The reply of para 3 above may please be read as reply of this para.

5. That the contents of paras 8 &9 of the petition are altogether wrong, false, incorrect, without any base and hence denied empathetically.

6. That the contents of para 10 sub-paras (a) to (e) are altogether wrong, false, incorrect, without any basis and hence denied in toto. The petitioner is not entitled for any relief as alleged in the prayer clause.

It is therefore humbly respectfully prayed that keeping in view the above facts and circumstances of this reply, the petition is devoid of any merits and deserves dismissal outrightly and the same may please be dismissed with special cost, in the interest of justice and fair play."

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:-

**"Rejoinder to preliminary objection:**

All the preliminary objections are wrong, false, incorrect and denied. The petitioner has effective cause of action and the petition is not false as alleged. It is also wrong and denied that the petitioner is barred by his act and conduct and the petition is barred by limitation as alleged.

**On Merits:-**

All the contents of paras number 1 to 6 are wrong, false, incorrect and hence denied emphatically. The contents of the petition are true and correct and hence reaffirmed. The respondents are trying to get rid of their own responsibility and are not willing to give due benefits to the petitioner which they are liable to give to the petitioner according to law and as per rule and procedure. The petitioner is entitled for the relief claim in the petition.

It is, therefore, respectfully prayed that the reply filed by the respondents may please be rejected and the petition may please be allowed with costs in the interest of justice and fair play."

On the pleadings of the parties the following issues came to be struck between the parties at contest.

1. Whether the petitioner has served the respondent s in different capacity for 277 ½ days initially? ..OPP

2. That whether the services of the petitioner has been dispensed with/terminated without serving any notice to the petitioner? ..OPP

3. Whether the petition has been condemned unheard? ..OPP

4. Whether the termination is void, invalid and inoperative? ..OPP

5. Whether the petitioner is entitled for the regularization, promotion and other benefits of the services as alleged? ..OPP

6. That the claim put in by the petitioner is barred by limitation?

7. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No.1 | As per issue No.4 |
| Issue No.2 | Notice not required, his not having fulfilled the statutory criteria for receiving notice. |
| Issue No.3 | Not pressed. |
| Issue No.4 | No |
| Issue No.5 | No findings in view of findings on Above issue |
| Issue No.6 | No, no findings in view of findings on Above issue |
| Issue No.7 | Claim petition dismissed. |

**REASONS FOR FINDINGS**

Issues No. 1, 2 and 4

Since all these issues are interlinked, hence, taken up together for determination.

In proof of the averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days of continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define “continue service” which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being than the one owing to any fault on the part of the workman. Since a perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant it enjoys a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did not render “continuous service” in the manner enjoined by law, inasmuch, as he rendered work with uncondonable legal breaks under the respondent, hence, then, when with their being even breaks in

the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable. Otherwise also the breaks being wholly imputable then to factors other than their being construable to be falling within the ambit of their being so reckonable, hence, their not affecting the continuity of service of the claimant under the respondent, as a natural controversy the intermittent cessor in the engagement of the claimant under the respondent is to be imputed to his abstention from work and not to any intentionally administered condonable fictional illegal breaks. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove with Ex. RW1/A achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(m) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(n) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(o) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(i) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(ix) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(x) two hundred and forty days, in any other case;

(j) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(ix) ninety-five days, in the case of workman employed below ground in a mine; and (x) one hundred and twenty days, in any other case.

**Explanation.**-For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xiii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xiv) he has been on leave with full wages, earned in the previous years;

(xv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

**Issue No. 3**

During the course of argument, this issue was not pressed before me, hence this issue decided as unpressed.

**Relief**

Claim petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
18.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*LabourCourt-cum-Industrial*
*Tribunal, Dharamshala.*

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**IN THE COURT OF SHRI SURESHWAR THAKUR, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.**

Reference : No. 6/07

Presented on : 7-3-2007

Decided on : 24-1-2008

Shri Tej Ram S/o Shri Lachu Ram Village Sidhwan, P.O. & Tehsil Banjar, District Kullu, H. P. . .*Petitioner.*

*Versus*

1. The Director of Primary Education, Himachal Pradesh Shimla-3 (2) The Deputy Director of Education (Primary), Kullu, District, Kullu, H.P. ..*Respondents.*

ORDER/AWARD

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

"Whether the termination of services of Shri Tej Ram S/o Shri Lachu Ram part time water carrier by the (1) The Director of Primary Education, Himachal Pradesh, Shimla-3 (2) The Deputy Director of Education (Primary), Kullu, District Kullu, H.P. w.e.f. 12.4.99 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

24.1.2008 Pr. Petitioner in person
Sh. K.S. Verma, Dy.D.A. for the respondent

The petitioner has stated that he does not want to pursue the case & same may be dismissed as withdrawn. In view of the statement made by the petitioner the petition is dismissed as withdrawn. The reference answered accordingly. The file after due completion be consigned to the record room.

Announced
24.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-Cum-Industrial*
*Tribunal, Dharamshala, H.P.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H.P. INDUSTRIAL TRIBUNAL–**CUM- **LABOUR COURT , DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference : No. 118/2003
(RBT No.362/04
Presented on 6.12.2007
Decided on 24.1.2008

Sh. Krishan Chand S/o Sh. Piyundi Ram, Vill. Bahehar, P.O. Bassi, Tehsil, Joginder Nagar, Distt. Mandi, H. P. ..*Petitioner.*

*Versus*

1. The Secretary H.P. State Electricity Board, Shimla, Distt. Shimla, H.P.

2. The Executive Engineer, HPSEB Division, Joginder Nagar, Distt. Mandi, H. P.
..Respondents.

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Dinesh Singh, Adv.

For the respondent : Sh. J. S. Chauhan, vice Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averment that he was engaged in the year 1996 by the respondent as a daily wage beldar and in that capacity he worked upto 1998, when in non compliance with the provisions of section 25-F of the Industrial Disputes Act, and the provisions of sub clause 2 of clause 14 of the Certified Standing Orders as framed by the respondent governing the manner of disengagement of the claimant by the respondent, his services came to be dispensed, with act of the respondent in disengaging the services of the claimant in non compliance with the aforesaid provision of law has been contended to be illegal null and void. Besides, it has been also asserted in the claim petition that while dispensing with the services of the claimant the respondent contravened the principle of "Last Come First Go", hence, such contravention has been contended to render the disengagement of the services of the claimant to be legally fallible. Consequently, it has been prayed that the disengagement of the services of the claimant be set aside and the respondent be directed to reinstate the claimant in service together with affording to him all consequential benefits.

The respondent contested the claim petition by filing of a detailed reply. In the preliminary objections, the respondent contended that the claim petition is not maintainable, that the claimant has no cause of action against the respondent and that the legal rights of the claimant having not come to be infringed by the respondent. On merits it has been contended that in the light of the copy of the mandays chart accompanying the reply and bearing Annexure R-1 and in its reflecting non satisfaction by the claimant with the condition precedent for the applicability of the provisions of section 25-F of the Industrial Dispute Act, inasmuch as, its disclosing the fact of the claimant not having rendered 240 days of continuous service in the 12 calendar months preceeding his retrenchment, therefore, non compliance if any, by the respondent with the provisions of the Industrial Dispute Act has been contended to, not, render the disengagement of the claimant to be legally fallible. Furthermore, it has been contended that since the claimant has been engaged against specific work on completion of specific works the, services of the claimant came to an automatic end. Hence, there was no necessity of serving upon the claimant any notice under any provisions of law as asserted by the claimant. Lastly it has been contended that there has been no violation by the respondent with the principle of "Last Come First Go" while the disengaging of the services of the claimant.

On the pleadings of the parties, this Tribunal framed the following issues for trial between the parties at contest:

1. Whether the services of the petitioner were terminated by the respondent with effect from 26.3.1998 in violation of the mandatory provisions of the Industrial Disputes Act, 1947 and clause 14.2 of the Certified Standing Orders of Board, as alleged? OPP.

2. If Issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP.

3. Whether the petition is not maintainable? OPR.

4. Whether the petitioner has no cause of action? OPR.

5. Whether the petitioner is estopped to file the petition by his act and conduct? OPR.

6. Whether the petitioner was engaged for a specific work and on completion of the said work the services of the petitioner automatically came to be an end? OPR.

7. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 Yes
Issue No.2 As per operative part
Issue No.3 No
Issue No.4 Not pressed
Issue No.5 Not pressed
Issue No.6 Not pressed
Issue No.7 Claim petition allowed

REASONS FOR FINDINGS

*Issue No. 1, 2 and 3*

Since all these issues are interlinked, hence, taken up together for determination.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.1369/2006 titled as The Secretary, HPSEB & Anr. & Sh. Krishan Chand & Anr. which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the ld. counsel for the petitioner belatedly, hence, I would proceed to decide the matter after having allowed the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public

servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then when their being breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered, then, while believing the view of the respondent then he was engaged against works of purely a casual nature which, nature of engagement of the claimant against such nature of work has also, not been sought to be repulsed by satisfactory evidence to the contrary by the claimant. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove. Therefore the entry of Annexure RAI achieving conclusiveness and for lack of evidence in rebuttal not having come to be adduced by the petitioner, consequently, with its demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits accordingly the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(p) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(q) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(r) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B).** Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(k) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(xi) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xii) wo hundred and forty days, in any other case;

(l) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(xi) ninety-five days, in the case of workman employed below ground in a mine; and

(xii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xvi) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xvii) he has been on leave with full wages, earned in the previous years;

(xviii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

As assertion was made on behalf of the petitioner that there has been infraction by the respondent with the principle of "Last Come First Go" while disengaging the services of the claimant, inasmuch, as certain juniors to the claimant came to be retained in service by the respondent at the time contemporaneous to the disengagement of the service of the claimant by the respondent. An opportunity was afforded to the ld. counsel for the respondent for him to sustain his plea that no persons juniors, as, contended by it continued to be retained by the respondent at the time contemporaneous to the disengagement from service of the claimant by the respondent, hence, no infraction of "Last Come First Go' had come be to be occasioned. The opportunity was availed by it by placing on record the seniority list of workmen under it, on perusal of said list it is appears that prima facie Suresh Kumar, Pritam Chand and Jagdish, Sudama Ram juniors to the claimant as they have been engaged subsequent to the initial engagement of the claimant and they are further revealed to be reengaged as, reflected, in RX.

On perusal of the said exhibit the very same persons namely Suresh Kumar, Pritam Chand and Jagdish, Sudama Ram also exist in Ex. P1, yet, in my view there is no necessity of entering into a discussion qua the facum of the aforesaid persons while being juniors to the claimant or not, and that their reengagement by the respondent employer has contravened the principle of 'Last Come First Go' especially, yet, in the light of the disclosure in RX of the said persons having come to be reengaged only in compliance by the respondent employer with the direction of the Judicial Forum, which act of the respondent in reengaging the service of the persons juniors to the claimant does not constitute any volitional act on the part of the respondent, so as to say that there was any intentional infraction of the principle of 'Last Come First Go', for, the following reasons:-

a. That admittedly the services of the juniors to the claimant was also disengaged at the time contemporaneous to the disengagement from the service of the claimant by the respondent, there was obviously, no "retention" of such juniors by the respondent/employer which retention of the said juniors at the time contemporaneous to the disengagement from service of the claimant by the respondent would have transgressed the principle of 'Last Come First Go'.

b. That when the services of the juniors to the claimant were dispensed with by the respondent employer at the time contemporaneous to the disengagement from service of the claimant, hence, such act manifesting fair play of the employer towards all workmen under, the, respondent/employer, therefore, as when the juniors to the claimant had come to mitigate their grievance inasmuch, as they approached the competent Judicial Forum with an appropriate application in accordance with law with relief of reinstatement which was ultimately granted in their favour, and its having been complied with by the respondent/employer in their having coming to reengage the services of the said persons, the claimant too, at that stage when he could have done likewise his having omitted to do so can be construed to have abandoned his rights, as, vested in by law, hence, their was no discrimination by the respondent/employer in not reengaging his services, when, obviously, their was no direction for his reinstatement in service by the respondent/employer as was the case qua his juniors. Besides, when the as already discussed hereinabove the Summon Bonum/anvil for testing the validaty of disengagement from service of the claimant inasmuch, as, their was a purported infraction of the principle of 'Last Come First Go' by the employer, is the intentional retention of purported juniors to him at the time contemporaneous to his disengagement by the employer respondent, which volitional intentional act of the employer has been demonstrated by the aforesaid discussion to have not occurred, hence, oust the applicability of the Rule of 'Last Come First Go' and consequentially, its, infringement.

Dehors the above discussions qua Suresh Kumar Pritam Chand Omi Chand and Jagdishwhose reinstatement in service for reasons foresaid does not constitute in contravention of principle of 'Last Come First Go' yet, when Ex. P1 recites certain persons names common to Ex. RX and Ex. P1, yet, when certain others names also which have been recited in Ex.P1 and have been deposed to be not only juniors to the claimant, but, also they had come to be retained at the time contemporaneous to the disengagement from service of the claimant by the respondent, hence, depicting the transgression of principle of 'Last Come First Go' and when it has not been unequivocally denied that the such persons as named in Ex. P1 are not junior to the claimant as apparent from a reading of the deposition of RW1 as existing in cross-examination to be persons who have been reengaged in pursuance to the direction of the Judicial Forum, yet, when subsequently, the persons who have been stated to be reengaged in pursuance to the direction of a Judicial Forum have been named in Ex. RX and when the persons commonly recited in RX and Ex. P1 are Sudama Ram Jagdish, Pritam Chand, Sudama Ram whereas the names of Makhan Singh, Om Prakash and Prakash Chand as existing in Ex. P1 do not exist in RX, therefore, when the names the aforesaid persons while not existing in RX whereas existing in Ex. P1, and have been not equivocally shown to be not juniors to the claimant by adduction into evidence of the best evidence comprising the seniority list of the aforesaid, including also the claimant, so as to demonstrate the seniority vis-à-vis the claimant, yet, when the said persons have also been said to be retained in Ex. P1, yet, not show in Ex. RX to have been so retained, in compliance by the respondent employer with the directions of a Judicial Forum, hence, which compliance would have not begotten a conclusion for reason aforesaid of the principle of 'Last Come First Go' having been contravened, I can come to the conclusion that not only the said persons have been retained by the respondent at the time contemporaneous to the disengagement from service of the claimant by the respondent, but

also they are juniors to the claimant, whose retention is illegal, concomitantly renders the disengagement from service of the claimant to be untenable.

**"25-G. Procedure for retrenchment.—** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. As also the view taken by Hon'ble Justice Shri Rajiv Sharma and while deciding CWP No.1117/2006 in which it was held that a delay of 12 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 5 years and the Hon'ble Justice Shri Rajiv Sharma has held while deciding CWP No.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 where there was a delay of 13 years and in which it was held that delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman. Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground of delay alone.

*Issues no. 4,5 and 6.*

During the course of argument, these issues were not pressed before, me, hence, these issues decided as unpressed.

*Relief*

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. In the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, and when the claim petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
24.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*LabourCourt-cum-Industrial Tribunal,*
*Dharamshala.*

**BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H. P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference: No 237/2001
(RBT 458/04)
Presented on 2.1.2008
Decided on 24.1.2008

Sh. Prem Singh S/o Sh. Mool Chand R/o Vill. Lihana, P.O. Gumma, Tehsil, Joginder Nagar, Distt. Mandi, H.P. ..*Petitioner.*

*Versus*

The Executive Engineer, H.P. State Electricity Board Electrical Division, Joginder Nagar, Distt. Mandi, H.P. ..*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Dinesh Singh, Adv.

For the respondent : Sh. J.S. Chauhan, Adv

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AWARD

The hereinafter extracted reference has been received for adjudication for the rendition of an award by this Tribunhal:

> "Whether the termination of services of workman Sh. Prem Singh S/o Sh. Mool Chand by the Executive Engineer, Electric Division, H.P.S.E.B. Joginder Nagar, Distt. Mandi, H.P. w.e.f. 24.3.1999, without complying provision of Standing Order's section 14(2) of H.P.S.E.B. and without complying section 25-G & 25-N of Industrial Disputes Act, 1947, as alleged is fair and justified? If not, what relief of service benefits and amount of compensation the above workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal with the averments that his disengagement by the respondent in the month of March, 1999, without serving upon a notice as envisaged under the provisions of rule 14(2) of the Industrial Establishment Standing Orders framed by respondent vitiated his retrenchment. Further more, it has been contended in paragraph 6 in the claim petition that the persons named in the said paragraph came to be reengaged by the respondent subsequent to the termination of the claimant, who was senior to them, hence, the reengagement of the said persons has been contended to have contravened the provisions of section 25(G) and (H) of the Industrial Disputes Act. Furthermore, it has been contended that the persons named in paragraph 8 of the claim petition who were fresh hands and who could not have been engaged by the employer subsequent to the retrenchment of the service of the claimant by the respondent, unless, the respondent had afforded an opportunity to the claimant for reengagement. However, when no such opportunity for reengagement has come to be afforded to the claimant and the purported juniors to the claimant named in paragraph 8 of the claim petition have come to be engaged, though, their engagement is a fresh engagement, hence, the provisions of section 25(h) of the Industrial Disputes Act has come to be violated resulting in the disengagement of the claimant being illegal. Lastly, it has been prayed that the disengagement of the claimant by the respondent while being in

contravention of the provision of section 14(2) (b) of the said standing order framed by the respondent be set aside and all consequential benefits be allowed in favour of the claimant.

The respondent contested the claim petition and filed detailed reply to it. In preliminary objections, contentions were raised by the respondent that not only the claim petition is not maintainable, but, also it is barred by limitation. On merits, it was contended that the claimant was never disengaged by the respondent, rather, it has been contended in the reply that the claimant abandoned the job. It is also denied in the reply of the respondent that the persons named in the claim petition and asserted in it to be the juniors to the claimant whose retrenchment in service has been contended to infract the provisions of section 25(G) of the Industrial Disputes Act have come to be engaged only in pursuance to the orders of H.P. Admn. Tribunal. In so far as Kala Devi is concerned, it has been contended that she has been appointed on compassionate ground. So far as the persons contended in paragraph 8 of the claim petition to be juniors to the claimant have been refuted to be juniors to the claimant. Hence, it has been contended in the reply that the claim petition be dismissed. From the pleadings of the parties, the following issues were framed by this Tribunal:

1. Whether the termination of services of the petitioner without notice is in violation of principle of last come first go and thus violative of the Certified Standing Orders and Sections 25-G and 25-H of the Industrial Disputes Act, 1947 and thus is illegal? OPP

2. In case issue No.1 is proved in the affirmative. Whether the petitioner is entitled to compensation and consequent benefits? ..OPR

3. Relief.

For the reason to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 : Yes
Issue No.2 : As per operative part of the Award
Issue No.3 : Claim petition allowed

REASONS FOR FINDINGS

*Issues No.1 and 2.*

Since both these issues are interlinked, hence, taken up together for determination.

An application has been filed under section 151 CPC on behalf of the petitioner seeking decision afresh on the Reference, in light of direction contained in the certified copy of orders of the Hon'ble High Court of H.P. while deciding CWP No.580/2006 titled as HP State Electricity Board Electrical Division Vs. Sh. Prem Singh & Anr. which has been placed on record. Since the certified copy of orders of the Hon'ble High Court of H.P. has been placed on record by way of an application preferred by the ld. counsel for the petitioner belatedly on dated, hence, I would proceed to decide the matter after allowing the application as preferred by the applicant, the same being formal in nature and also for ensuring compliance with the directions of the Hon'ble High Court.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief. However, the uncorroborated testimony of the

claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being their owing to any fault on the part of workman. Since perusal of Ex. RW1/H which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then when their being breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered, then, while believing the view of the respondent then he was engaged against works of purely a casual nature which, nature of engagement of the claimant against such nature of work has also, not been sought to be repulsed by satisfactory evidence to the contrary by the claimant. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove. Therefore, the entry of the Ex. RW1/H achieve conclusiveness and for lack of evidence in rebuttal not having come to be adduced by the petitioner, consequently, with their demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits accordingly the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(s) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(t) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(u) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B).** Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(m) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(xiii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xiv) two hundred and forty days, in any other case;

(n) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(xiii) ninety-five days, in the case of workman employed below ground in a mine; and

(xiv) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xix) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xx) he has been on leave with full wages, earned in the previous years;

(xxi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

It is also contended by the claimant that their has been infraction of the provisions of section 25-G of the Industrial Disputes Act by the respondent while disengaging him from service inasmuch, as, two persons detailed in the examination-n-chief of the claimant namely Subhash Chand and Gian Chand being juniors to the claimant having come to be retained in service which retention of the aforesaid juniors has been voiced to infringe the provisions of section 25-G of the Industrial Disputes Act mandating the principle of 'Last Come First Go' whose transgression by the respondent employer has also, when, then, has argued to be rendering the disengagement of the service of the claimant by the respondent to legal. Now, while testing the fact of the aforesaid persons being juniors or not to the claimant at the time of disengagement from service of the claimant by the respondent it is necessary to bear in mind the statement occurring in the cross-examination of RW1, wherein, there is an unequivocal admission by the said witness of the aforesaid having been engaged on 29.4.1997, whereas, the claimant had come to be engaged earlier, hence, enjoying seniority above the aforesaid. Consequently, then with his seniority over his junior who have been retained by the employer as evident from an admission to that effect existing in the crossexamination of RW1, the retention of juniors at the time contemporaneous to the disengagement from service of the claimant by the respondent when forbidden by law, such

retention, constitutes an infraction of the rule of 'Last Come First Go' having come to be occasioned at the instance of the employer, hence, rendering the disengagement from service of the claimant by the respondent as illegal.

**"25-G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

In light of the firm laid down by the Hon'ble Mr. Justice Rajiv Sharma while deciding CWP No.1117/2006 which had arisen against the Award of this Court in which the plea of delay and latches and its concomitant effect, on such an unexplained/inordinate delay leading to the fading of the dispute had been considered and negated, therefore, any view contrary to the view taken by the Hon'ble High Court in the above case would be not sustainable. Also a similar view has taken by Hon'ble Justice Shri Rajiv Sharma while deciding CWP No.1117/2006 in which it was held that a delay of 13 in years that case was held to not fatal, therefore, in the instant case also where there is a delay of about 2 years with the Hon'ble Justice Shri Rajiv Sharma having held while deciding CWP NO.1117/2006 while referring to a judgment of the Hon'ble Apex Court in State of Punjab V. Anil Kumar, Judgment Today 2007 (7) SC 559 that where there is a delay of 13 years then such delay would affect only the quantum of or payment of backwages, to a disengaged workman and shall not be fatal to his claim for reinstatement, therefore, the delay which has taken in the raising of the dispute in this case, would, in light of the above referred judgment of the Hon'ble Apex Court referred by Justice Shri Rajiv Sharma while deciding CWP No.1117/2006, would affect or impinge upon only the relief or quantum of backwages to be given to the workman.

Also the above view has been taken by the Hon'ble Justice Sanjay Karol while deciding CWP No.1542/2002 titled as HPFC vs. Garibu Ram where the Hon'ble Justice Sanjay Karol while considering a catena of rulings of the Hon'ble Apex Court in the concluding portion, held that in the absence of any provision for limitation it would not be open to the Court, to oust the Reference on the ground delay. Issue decided accordingly.

*Relief*

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. In the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, and when the claim petition is belated, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
24.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial*
*Tribunal, Dharamshala.*

**BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT , DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference: No.210/2003
(RBT No.15/04)
Presented on 4-8-2003
Decided on 24-1-2008

Sh. Prem Singh S/o Shri Achhru Ram, R/o Vill. Chhatar, P.O. Brang, Tehsil, Sarkaghat, Distt. Mandi, H.P. ..*Petitioner*.

*Versus*

1. Himachal Pradesh Housing Board, through its Chairman-cum-Chief Executive Engineer, Shimla-2

2. Executive Engineer, Himachal Pradesh Housing Board Division, Mandi, District Mandi, H.P.

3. Assistant Engineer, Himachal Pradesh Housing Board Sub Division, Mandi, District Mandi, H.P. ..*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. R.L. Kaith, Adv.

For the respondent : Sh. Tarun Pathak, vice Adv. of Sh. S.C.Dewadi, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

"Whether the retrenchment of services of Shri Prem Singh S/o Sh. Achhru Ram, daily wages Mortar Mate by the Executive Engineer, H.P. Housing Board Division Mandi, District Mandi, H.P. w.e.f. 1.8.2001 whereas work is available as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted astatement of claim before this Tribunal, the contents of claim petition are accepted adverbatim.

"1. That the petitioner did his two years diploma in Surveyor (Civil) from Sri Ram I.T.I., Chamba, Distt. Chamba, H.P. for session 1993-95 and got registered his name with the Employment Exchange Sarkaghat in the year 1995 for the suitable appointment in HP State especially for the post of Tracer Draughtsman, Junior Draughtsman as the qualification is essential one for such posts.

2. That the Respondent Board engaged the petitioner on 22.10.1998 as daily rated Mortar Mate and at the first instance was given posting at Pandoh under the direct supervision of Respondent No.3 and the control of Respondent No.2. The petitioner was being paid wages @ Rs.82/- per day at the relevant point of time of his engagement.

3. That except for some fictional breaks, the petitioner was continued to work with the respondents Board as Surveyor and completed more than 240 days in preceding 12 months before his services were illegally terminated vide notice dated 15.2.2000 w.e.f. 16.3.2000, which was assailed by the petitioner before H.P. State Administrative Tribunal in OA No: 1334/2000 and after getting the reply of the respondents, wherein, the respondents admitted the aforesaid contention of the petitioner before the Hon'ble Tribunal, who vide its order dated 3.1.2001 while allowing the Original Application No: 1334/2000 of the petitioner has set aside and quashed the notice of retrenchment issued by the respondents by holding that the respondents did not met the legal requirement of Section 25-F of the Industrial Disputes Act and as a consequence thereof, the respondents were directed to reengage the petitioner the same post, from where, his services were terminated without any backwages, however, the period of disengagement and reengagement was ordered to be counted for the purpose of seniority. The copy of the Original Application along with Annexures filed by the petitioner before the Tribunal, reply filed by the respondents along with annexure thereto and the order of the Hon'ble Tribunal dated 3.1.2001 is enclosed herewith.

4. That the petitioner was reengaged by the respondents on the strength of the aforesaid order of the Hon'ble HP Administrative Tribunal w.e.f. 17.1.2001 and was given posting at Mandi with respondent no.3 the Surveyor Social Housing Colony Sanahadi and Social Housing Colony Dhaundi, Mandi, H.P. to be executed. The petitioner was allowed to work continuously without any breaks till 3rd September, 2001, when, vide verbal order of the respondent no.2 conveyed by Respondent no.3 the services of the petitioner were terminated without following due process of law, in so much so, the mandate of section 25-F of the Industrial Disputes Act, 1947 was all together ignored. The petitioner as a result thereof again approached the H.P. State Administrative Tribunal by filing OA(M) No: 402/2001 against the aforesaid illegal verbal termination and the Hon'ble Tribunal vide its order dated 17-4-2002 had directed the petitioner to approach the competent Forum in as much as, the dispute, which falls under the Industrial Disputes Act, 1947 is not to be tried in H.P. Administrative Tribunal. Resultantly, the petitioner preferred Demand Notice to the respondents and the copy thereof was forwarded to Labour Officer, Central Zone, Mandi, H.P. as well as Labour Inspector, Sadar Mandi Distt. Mandi for information and specifically requested to initiate conciliation proceedings. The copy of the order of the Hon'ble Tribunal dated 17-4-2002 and the Demand Notice are annexed herewith. As a sequal thereof, the Ld. Inspector-cum-Conciliation Officer, Mandi intervened the matter and the reply was also called from the respondents. The copy of the reply filed by the respondents is placed on record for the perusal of this Hon'ble Court. And ultimately, no reconciliation took place and the reference was made to this Hon'ble Court/Tribunal, hence, the present petition is being preferred against the illegal action of the respondents on the following inter-alia amongst grounds:-

(a) That the action of the respondents, whereby, the services of the petitioner have been put to an end by the oral order on 3rd September, 2001 is illegal, highly unjust, arbitrary, against the mandate of Industrial Disputes Act and the Rules framed thereunder apart from being the violation of the principle of natural justice, which is liable to be quashed and set aside by the orders of this Hon'ble Tribunal.

(b) That the petitioner was engaged by the respondents on 22.10.1998 and he had discharged his duties to the best satisfaction of his employers and to the best of his ability continuously and interruptedly save and except the fictional breaks (which has been declared as unconstitutional by the Apex Court) which occurred only in between 22.10.1998 till 16.3.2000, and thereafter, the petitioner remained continuously in the employment till 3.9.2001, when, his services were illegally terminated, in other words, on account of the continuous services of the petitioner w.e.f. 22.10.1998 till the day of illegal termination, the petitioner was entitled to have the protection of the Section 25-F of the Industrial Disputes Act as well as the principle of 'first come last go', which has been taken into account by the respondents while indulging in the illegal action

with respect to termination of the petitioner from the services, resultantly, the same is illegal and void-ab-initio.

(c) That the alleged plea of the respondents for the termination of services of the petitioner that he was engaged on contract basis for specific period and specified work is against the facts as well as the record of the respondents, which indicate that the respondents had utilized the services of the petitioner as Surveyor at different work/places, however, under the control of Respondents No.2 & 3 respectively and the petitioner at no point of time had raised any objection of his posting against any work, any where under the control of Respondents No.2 & 3 and still willing to serve against any work under the control of the respondents. It is pertinent to mention here that infact, the petitioner has worked at Mandi till 3rd September, 2001 however, his presence was not marked since 1.8.2001 for the want of muster roll and the work against which , he was deployed was still subsisting even at that point of time and is still continuing subsequent to the day of disengagement of the petitioner and even junior person was allowed to work. Furthermore, the respondents are directed to supply the seniority list/casual cards maintained by it in Mandi Division for the post of daily rated Surveyor w.e.f. 22.10.1998 till date, which will clinch the issue.

(d) That the intermittent fictional breaks w.e.f. 22.10.1998 to 16.3.2000 has other wise been declared as illegal by the H.P. State Administrative Tribunal in Original Application filed by the petitioner and even otherwise also, with the help of section 25-B of I.D. Act, the petitioner will have to be considered in the continuous employment in as much as, no notice/compensation was paid to the petitioner by the respondents for such breaks.

(e) That the action of the respondents illegal in so mush so, it has indulged in hire and fire policy and has not followed the mandate of 25-F of the I.D. Act. The petitioner humbly submits that even till date, the respondents is having number of projects/work, where the petitioner can be suitably accommodated as he is having preferential right over the fresh hands on account of his experience and qualification. At present, the respondents are executing H.P. Housing Colony at Dhaundi sub Division and Division Mandi. The execution of construction work of Handicapped Rehabilitation Project at Sundernagar, Housing Colony construction work at Bajoura under sub Division Kullu, Division Mandi, H.P. Housing Board Colony at Sanehadi at Mandi and Police quarters at Jungleberi at Hamirpur under Division Mandi. The petitioner requests this Hon'ble Tribunal to call for the records of such Projects from the respondents in the interest of justice.

(f) That the action of the respondent is highly depreciated in as much as, the right of consideration of regularization has all together been taken away illegally by the respondents, although, the work is still available and juniors are allowed to work and the petitioner has been discriminated to the utter violation of Article 14 and 16 of the Constitution of India and the same is liable to be declared as illegal by this Hon'ble Court. It is, therefore, humbly prayed that this petition may kindly be allowed to the following aspects:-

(i) That the action of the respondents No.2, whereby the services of the petitioner as daily rated Surveyor has been orally terminated on 3rd Sept. 2001/1.8.2001 may kindly be set-aside and quashed and the respondents may be directed to consider the petitioner continuous in the employment from the date of his disengagement till the date of his reengagement with all consequential benefits i.e. the backwages, counting of the seniority towards regularization may also be granted to the petitioner.

(ii) That after setting aside the oral termination order of the service of the petitioner, the respondents may be directed to grant all the consequential benefits flow therefrom.

(iii) Any other relief deemed fit by this Hon'ble Court may also be granted to the petitioner.

(iv) The record of the case may also be summoned for the perusal of this Hon'ble Tribunal/Court."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

"1. That the contents of Para-1 of the petition are denied for want of knowledge. Hence no reply is called for.

2. That the contents of Para-2 are matter of record, hence call for not reply. However, it is submitted that the petitioner was engaged as a Suprevisor for a specific work i.e. construction of Police Quarters at Manali. The applicant had given an affidavit to effect that he will not claim any seniority or insist for continuation on job after the completion of 85 days. A copy of the affidavit is submitted a Annexure-R1. In fact the petitioner was engaged on a particular work of Police Housing Scheme which was executed by the respondent as deposit work for the Police Department. The services of the petitioner were required to be disengaged as and when the work is completed.

3. That the contents of Para -3 of the petitioner are admitted to the extent that the petitioner approached the Hon'ble Tribunal by way of filing the O.A. NO.1334/2000 and the Hon'ble Tribunal had directed the respondent to reengage the applicant in the same post from where his services were terminated. The order of disengagement was quashed as the respondent had not paid amount of compensation along with the notice, to the petitioner.

4. That the contents of Para-4 are admitted to the extent that the petitioner approached HP State Administrative Tribunal against the termination order and the Hon'ble Tribunal had held that application pertains to the Industrial Dispute and the Tribunal had no jurisdiction to hear the matter. Rest of the contents of para are wrong and denied. It is specifically denied that the services of the petitioner were terminated without following due process of law in so much so the mandatory provision of Section 25-F of the Industrial Dispute Act, 1947. In fact the respondent No.2 has served notice of retrenchment to the petitioner vide letter dated 28-7-2001 along with the retrenchment compensation and the said notice was received back. A copy of notice sent to the petitioner is submitted herewith as Annexure –R2. It is further submitted that the respondent No.3 has sent letter to the petitioner intimating that the retrenchment compensation was sent to the petitioner which was received back with remarks of the postal authority that the addressee is not available at home. Therefore, the petitioner was requested vide letter dated 6.9.2001 to attend the office of the respondent No.3 on any working day to receive the amount of compensation in cash. The said letter has been received back with the remarks "refused/returned to sendee". A copy of the letter dated 6.9.2001 along with copy of envelope are submitted herewith as Annexure R3 & R4. Therefore, the petitioner has intentionally evaded to receive the compensation. The proceedings were initiated by the Inspector-cum-Conciliation Officer, Mandi. The respondent No.2 in the reply submitted that the applicant was engaged for a specific No.2 in the reply submitted that the applicant was engaged for a specific work/period and his services were terminated after completing the mandatory formalities under relevant provisions of the law on completion ofthe job i.e. completion of buildings/quarters against Police Housing Scheme as a deposit work. However, reply to ground a to f are as under:-

*Ground (a) to (f)*

1. That the contents of grounds (a) to (f) are wrong and emphatically denied. It is specifically denied that the services of the petitioner have been put to an end by the oral orders on 3rd September, 2001 is, illegal, highly unjust, arbitrary and against the mandate of the Industrial Dispute Act. and the rules frames there under. It is submitted that the petitioner was engaged for a specific job and for a specific period against construction of buildings under Police Housing Scheme. The deposit works when came to an end, there was not work left to the petitioner. The petitioner was reengaged on the directions of the Hon'ble Tribunal because of the fact that mandatory provision of law were not followed while terminating the services of the petitioner. The petitioner was engaged as per the order of the Hon'ble and he remained without any work. As such, the services of the petitioner were dispensed with strictly as per the provisions of the relevant law. Therefore, the provisions of Section 25-F of the Industrial Dispute Act, 1947 have not been violated as alleged. The "Principle of last come first go" has been followed. Therefore, the allegation of the petitioner are not tenable.

In view of the submissions made above, it is therefore prayed that the petition may kindly be dismissed with cost in the interest of justice".

The claimant instituted a rejoinder to the reply of the respondents and contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced ad-verbatim hereinafter:-

"1. In rejoinder to para-1 of the reply the averments made in para-1 of the claim petition is reasserted and reaffirmed.

2. That the contents of para-2 of the reply which is not admitted by the respondent is wrong, incorrect and denied. In rejoinder thereto, it is submitted that the Annexure R-I cannot be used against the petitioner being un constitutional as is violative of Articles 14 and 16 of the Constitution of India, in so much so the same was executed under compalling circumstances whre on the hand the petitioner being unemployed was/is hapless condition while the respondent was having upper/dominate bargaining condition. The aforesaid documents is not relevant in so far as the deployment of the petitioner in other different scheme/ projects being run by the respondents through out the State where the services of the petitioner can be utilized on the strength of his experience /qualification. The respondent utilized the services of the petitioner after the completion of Police Housing Scheme Manali at Social Housing Colony Nahadi, and Social Housing Colony Dhaundi. Thereafter he was shown marching order without due process of law.

3. Para-3 of the reply being admission calls for no rejoinder.

4. That the contents of para -4 of the reply except the admitted statement of the respondent is wrong incorrect, hence denied. The corresponding statement made in para -1 of the claim petition are reasserted and reaffirmed. Apart from this, it is specifically denied that the respondent at any point of time had sent any notice contemplated in Annexure R-II to the petitioner. Similarly it is wrong and denied that the petitioner was at any point of time directed by the respondent for the acceptance of retrenchment of compensation. The facts remain that even till date no retrenchment compensation has earlier been deposited in this Hon'ble Tribunal or has been paid to the petitioner and the alleged plea of Annexure R-III and IV is taken in order to frustrate the lawful claim of the petitioner. The petitioner humbly submit that the respondent is still having number of project of scheme in the State where the services of the petitioner can be derived and he is more concerned about his reemployment in the event when the respondent has retained/hired junior /fresh hand for the execution of the work of new schemes /projects.

5. That the contents of reply to ground No. a to f are not admitted and the submissions made in the corresponding paragraph are reasserted and reaffirmed. It is, therefore, most respectfully prayed that this rejoinder may kindly be taken on record and the petitioner may kindly be allowed with costs, in the interest of justice."

On the pleadings of the parties, this Tribunal framed the following issues have been struck between the parties at contest.

1. Whether the petitioner is retrenched by the respondent w.e.f. 1.8.2001 in violation of the mandatory provisions of Industrial Disputes Act, is illegal and unjustified? OPP

2. If issue No.1 is proved in affirmative to what service benefits and amount of compensation the petition is entitled to? OPP

3. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 : Yes
Issue No.2 : Reinstated in service without back wages
Issue No.3 : As per operative part

REASONS FOR FINDINGS

**Issue No.1&2**

In proof of the contentions and averments as asserted by the claimant in his claim petition the claimant has taken to depend upon his affidavit Ex. P1 tendered into evidence during the course of his examination-in-chief. However, it cannot be imputed credibility being merely the bald testimony of the claimant uncorroborated by any potent documentary evidence. On the other hand the respondent in support of their assertions in their reply have depended upon the testimony of RW1, who, has deposed about the factum of notice of disengagement of the claimant from service, in compliance, with, the provision of section 25-F (a) and (b) of the Industrial Disputes Act having been despatched to the claimant under Ex. RA and Ex-RB and of his being returned by the postal authorities with the endorsements in the Ex. RA copy of the notice having been sent fresh to the claimant after Ex. RB came to be not served upon the claimant. It is also contended that the existence of Exhibits RW1/A and RW1/B substantiate the fact that the claimant had intentionally refused accept service of the notice as envisaged by law, hence, such intentional refusal is to be taken put the mart of having served upon him in accordance with law.

In the light of endorsement of postal authority in Exhibits RW1/A and RW1/B in which there is an endorsement that there is a refusal on the part of the claimant, an, argument is put forth that the refusal to accept service in the part of the claimant, as, endorsed in the exhibits, such intentional refusal of the claimant to accept service of notice, marks the factum of its being construed to be its taken to be constituting service of the notices having been effected upon him notice in accordance with law. However, when viewed in the light of the fact that the postal official who purportedly made such a report with the said version, not having stepped into witness box, so as to testify to the said endorsement, the report has remained not proved. Now, even if assuming that the report of the official of the postal authority is admissible in evidence, while having been made by a public servant during the discharge of his official duties, then, also, their ought to have been corroborative evidence by way of deposition of persons in whose presence such purported

refusal was made by the claimant so as to say that then their was proven intentional refusal on the part of the claimant to accept the service, with its concomitant effects in law, resultantly, for dearth of the above nature of evidence having come on record, it has to be construed that the report of the postal official has no conclusive weight in proving the factum of notice having been served upon the claimant. Even assuming that the notice as envisaged under law had come to be served upon the claimant or in other words the provisions of section 25-F of the Industrial Disputes Act had come to be complied with then, even light of the admission in the cross-examination of RW2, that, the envelope, in, which there was an endorsement of refusal to accept service as made by the postal authorities, and its conveying, intentional refusal of the claimant to accept service, hence, construable to be then, delivery of the notice upon the claimant, did not contain with any draft comprising the retrenchment compensation, nor the retrenchment notice, hence, the envelope can be taken to be not containing the said retrenchment compensation, nor the retrenchment notice as, contended to be enclosed in the envelope, therefore, significatory of the factum that their was no compliance by the respondent with the mandatory statutory requirements, resultantly, the disengagement from service of the claimant is rendered untenable.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(v) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(w) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(x) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(o) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(xv) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xvi) two hundred and forty days, in any other case;

(p) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(xv) ninety-five days, in the case of workman employed below ground in a mine; and

(xvi) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xxii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxiii) he has been on leave with full wages, earned in the previous years;

(xxiv) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

It is also contended on behalf of the claimant that there is an infraction of the principle of 'Last come First Go' as envisaged and as comprised in the provisions of section 25-G of the Industrial Disputes Act which provisions are extracted hereinafter, inasmuch, as, a fresh handnamely Manoj Kumar though admitted in RW1 the cross-examination to having been engaged subsequent to the disengagement from service of the claimant by the respondent in a different trade so as to then absolve the employer from the liability of to complying with the provisions of section 25(H) of the Industrial Disputes Act, necessitating the requirement of notice of reengagement having been served on availability of work with the employer, then, notice on its being issued and the claimant having not complied with it would have validated the engagement of a fresh hand. Obvious, when no record has produced to prove the factum of the said fresh hand having been engaged in a different trade then that in which the claimant was engaged nor when any proof of compliance by the employer with the requirement of the provisions of 25-H of the Industrial Disputes Act, has been adduced, it has to be construed that not only a fresh hand, but was engaged that, also such fresh hand was engaged in the same trade as the claimant, besides, when, their is no proof of compliance by the employer with the provisions of section 25-H of the Industrial Disputes Act such non compliance, invalidates the engagement of fresh hand, entitling, the claimant to reengagement.

*Issue No.3.*

The respondent have pointedly submitted that since the claimant was engaged for a specific work and since the claimant had filed an affidavit bearing Ex. D1 which is in record in which he has admitted to his having been engaged for specific work on whose completion he had further undertaken to accept his discontinuance service by the respondent, therefore, in light of the provisions of section 2(oo) (bb) whose provisions are extracted hereinafter envisaging that in case workman engaged for specific works for specific period of time on completion of said work the service have to by deemed to come to an automatic end on completion of specific/limited tenure of time thereby relieving the employer from the applying the mandatory statutory provisions before coming to disengage the service of the claimant. However, bearing in mind the fact that the affidavit is executed on October, 1998 whereas the services of the claimant were dispensed with as a matter of fact under Ex. RW1/A in the year 2001 and, that too, in purported compliance with the

provisions of section 25-F of the Industrial Disputes Act, obviously, it is demonstrative of waiver by the respondent employer with condition spelt out in the affidavit Ex. D1as when service of the claimant were engaged beyond the period spelt out in Ex. D1 is significatory of the factum of such waiver or abandonment of the conditions spelt out in Ex. D1, therefore, estopps the respondent employer to contend that the conditions of employment/ engagement of the claimant undertaken by him under Ex. D1 for construing the factum of an automatic cessor on completion of works specific period of time is made out, hence, argument is rejected. Issue decided accordingly.

"Section 2 (oo) (bb) of the Industrial Disputes Act

(oo). "retrenchment" means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

*Relief*

Claim petition allowed. The respondents are directed to reengage the claimant in the same capacity in which he was rendering work for them prior to his disengagement, so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in the light of the fact that the claimant was a seasonal workman, so also, in the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, when the claim petition is highly belated, the relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
24.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*LabourCourt-cum-IndustrialTribunal,*
*Dharamshala.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDI NG JUDGE, H.P. INDUSTRIAL TRIBUNAL–CUM- LABOUR COURT , DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference: No.209/2003
(RBT No.366/04)
Presented on 4.8.2003
Decided on 24.1.2008

Sh. Karam Singh S/o late Sh. Sant Ram, R/o Vill. Susan, P.O. Chambi, Tehsil, Sundernagar, District, Mandi, H.P. ..*Petitioner*.

*Versus*

1. Himachal Pradesh Housing Board, through its Chairman-cum-Chief Executive Engineer, Shimla-2

2. Executive Engineer, Himachal Pradesh Housing Board Division, Mandi, District Mandi, H.P.

3. Assistant Engineer, Himachal Pradesh Housing Board Sub Division, Mandi, District Mandi, H.P. ..*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. R.L. Kaith, Adv.

For the respondent : Sh. Tarun Pathak, vice Adv. of Sh. S.C. Dewadi, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

> "Whether the retrenchment of services of Shri Karam Singh S/o Shri Sant Ram, daily wages Mortar Mate by the Executive Engineer, H.P. Housing Board Division Mandi, District Mandi, H.P. w.e.f. 1.8.2001 whereas work is available as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are accepted adverbatim.

"1. That the petitioner did his two years diploma in Draughtsman (Civil) from Sri Ram I.T.I., Rishikesh, Distt. Dehradun (Utranchal) for session 1986-88 and got registered his name with the Employment Exchange Sundernagar for the suitable appointment in HP State especially for the post of Tracer Draughtsman, Junior Draughtsman as the qualification is essential one for such posts.

2. That the Respondent Board engaged the petitioner on 22-10-1998 as daily rated Mortar
Mate and at the first instance was given posting at Pandoh under the direct supervision of Respondent No.3 and the control of Respondent No.2. The petitioner was being paid wages @ Rs.65/- per day at the relevant point of time of his engagement.

3. That on 15-11-1998, the respondent directed the petitioner to perform his duty as Mortar Mate at Kullu towards the execution of the construction work of Police Housing Scheme to be executed by the respondents and accordingly, the petitioner reported his joining at Kullu on 16-11-1998. For the purpose of administrative control, Kullu also falls under Respondent No.2 & 3. The petitioner except for some fictional breaks continued worked with the Respondents Department

as Mortar Mate and completed more than 240 days in preceding 12 months before his services were illegally terminated vide Notice dated 15th February, 2002 w.e.f. 16-3-2000, which was assailed by the petitioner before the HP State Administrative Tribunal in OA No. 1329/2000 and after getting the reply of the respondents, wherein, the respondents admitted the aforesaid contention of the petitioner before the Hon'ble Tribunal, who vide its order dated 3.1.2001 while allowing the Original Application No: 1329/2000 of the petitioner has set-aside and quashed the notice of retrenchment issued by the respondents by holding that the respondents did not met the legal requirement of Section 25-F of the Industrial Disputes Act and as a consequence thereof, the respondents were directed to reengage the petitioner on the same post, from where, his service was terminated, without any backwages, however, the period of disengagement and reengagement was ordered to be counted for the purpose of seniority. The copy of the Original Application alongwith Annexure filed by the petitioner before the Tribunal, reply filed by the respondents alonwith annexures thereto and the order of the Hon'ble Tribunal dated 3.1.2001 is enclosed herewith.

4. That the petitioner was reengaged by the respondents on the strength of the aforesaid order of the Hon'ble HP Administrative Tribunal w.e.f. 16.1.2001 and was given posting at Gohar against the construction work of Tehsil Residential quarters to be constructed by the respondents. The petitioner was allowed to work continuously without any breaks till 3rd September, 2001 when, vide verbal order of Respondent No.2 conveyed by Respondent No.3, the services of the petitioner were terminated without following due process of law in so much so, the mandate of section 25-F of the Industrial Disputes Act, 1947 was all together ignored. The petitioner as a result thereof again approached the HP Administrative Tribunal by filing OA (M) NO.394/2001 against the aforesaid illegal verbal termination and the Hon'ble Tribunal vide its order dated 27.2.2002 had directed the petitioner to approach the competent Forum in as much as, the dispute, which falls under the Industrial Disputes Act, 1947 is not to be tried in HP Administrative Tribunal. Resultantly, the petitioner preferred Demand Notice to the respondents and the copy thereof was forwarded to Labour Officer, Central Zone, Mandi, HP as well as Labour Inspector, Sadar, Mandi, Distt. Mandi for information and specifically requested to initiate conciliation proceedings. The copy of the order of the Hon'ble Tribunal dated 27.2.2002 and the Demand Notice are annexed herewith. As a sequal thereto, the Labour Inspector-cum-Conciliation Officer, Mandi intervened in the matter and the reply was also called from the respondents. The copy of the reply filed by the respondents is placed on record for the perusal of this Hon'ble Court. And ultimately, no reconciliation took place and the reference was made to this Hon'ble Tribunal, hence, the present petition is being preferred against the illegal action of the respondents on following inter-alia amongst grounds:-

(a) That the action of the respondents, whereby, the services of the petitioner have been put to an end by the oral order on 3rd September, 2001 is illegal highly unjust, arbitrary, against the mandate of Industrial Disputes Act and the Rules framed thereunder apart from being the violation of the principle of natural justice, which is liable to be quashed and set-aside by the orders of this Hon'ble Tribunal/Court.

(b) That the petitioner was engaged by the Respondents on 2210-1998 and he had discharged his duties to best satisfaction of his employers and to the best of his ability continuously and uninterruptedly save and except the fictional breaks (which has been declared as unconstitutional by the Apex Court), which was given only in between 22-10-1998 till 16-3-2000, and there after, the petitioner remained continuously in the employment till 3-9-2001 when, his services were illegally terminated, in other words, on account of the continuous services of the petitioner w.e.f. 22-10-1998 till the day of illegal termination, the petitioner was entitled to have the protection of the provision of Section 25-F of the Industrial Disputes Act as well as the principle of 'first come last go', which has not been taken into account by the respondents while indulging in

the illegal action with respect to termination of the petitioner from the services, resultantly, the same is illegal and void-abinitio.

(c) That the alleged plea of the respondents for the termination of services of the petitioner that he was engaged on conduct contract basis for specified period and specified work is against the facts as well as the record of the respondents, which indicate that the respondents had utilized the services of the petitioner as Mortar Mate at different work/places, however, under the control of Respondents No. 2 & 3 respectively and the petitioner at no point of time had raised any objection of his posting against any work, any where under the control of Respondents No.2 & 3 and still willing to serve against any work under the control of the respondents. I is pertinent to mention at this stage that infact, the petitioner had worked at Gohar till 3rd September, 2001 however his presence was not marked w.e.f. 1-8-2001 forwardof msuterroll and the work against which , he was deployed was still subsisting even that pinot of time and was completed at much after or say, 3 to 4 months subsequent to the day of disengagement of the petitioner and even junior person was allowed to work. The name of one such junior person is Manoj Kumar, who was working under the same Division and sub Division as that of the petitioner. Further more, the respondents are directed to supply the seniority list/casual cards maintained by it in Mandi Division for the post of daily rated Mortar Mate w.e.f. 22-10-1998 till date, which will clinch the issue.

(d) That the intermittent fictional breaks w.e.f. 22.10.1998 to 16.3.2000 has otherwise been declared as illegal by the HP Administrative Tribunal in Original Application filed by the petitioner and even otherwise also, with the help of Section 25-B of I.D. Act, the petitioner will have to be considered in the continuous employment in as much as, no notice/compensation was paid to the petitioner by the respondents for such breaks.

(e) That the action of the respondents is illegal in so much so, it has indulged in hire and fire p0olicy and has not followed the mandate of 25-F of the I.D. Act. The petitioner humbly submits that even till date, the respondents is having number of projects/work, where, the petitioner can be suitably accommodated as he is having preferential right over the fresh hands on account of his experience and qualification. At present, the respondents are executing HP Housing Colony at Bagla Sub Division and Division Mandi. The execution of construction work of Handicapped Rehabilitation Project at Sundernagar, Housing Colony construction work at Bajoura under Sub Division Kullu Division Mandi, HP Housing Board Colony at Sanehardi an Mandi (likely to be taken up by the respondents) and police quarters at Jungleberi at Hamirpur under Division Mandi. The petitioner requests this Hon'ble Tribunal to call for the records of such Projects from the respondents, in the interest of justice.

(f) That the action of the respondents is highly deprecated in as much as, the right of consideration of regularization has all together been taken away illegally by the respondents, although, the work is still available and junior persons are allowed to work and the petitioner has been discriminated to the utter violation of Articles 14 and 16 of the Constitution of India, and the same is liable to be declared as illegal by this Hon'ble Court. It is, therefore, humbly prayed that this petition may kindly be allowed to the following effects:

(i) That the action of the respondents No.2 whereby, the services of the petitioner as daily rated Mortar Mate has been orally terminated on 3rd September, 2001/1-8-2001 may kindly be set-aside and quashed and the respondents may be directed to consider the petitioner continuous in the employment from the date of his disengagement till the date of his reengagement with all consequential benefits i.e. the backwages, counting of the seniority towards regularization my also be granted to the petitioner.

(ii) That after setting aside the oral termination order of the services of the petitioner, the respondent may be directed to grant all the consequential benefits flow therefrom.

(iii) Any other relief deem fit by this Hon'ble Court may also be granted to the petitioner.

(iv) The record of the case may also be summoned for the perusal of this Hon'ble Tribunal."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

"1. That the contents of Para-1 of the petition are denied for want of knowledge. Hence no reply is called for.

2. That the contents of Para-2 are matter of record, hence call for not reply. However, it is submitted that the petitioner was engaged as a Motar Mate for a specific work i.e. construction of Police Quarters at Kullu. The applicant had given an affidavit to effect that he will not claim any seniority or insist for continuation on job after the completion of 85 days. A copy of the affidavit is submitted a Annexure-R1. IN fact the petitioner was engaged on a particular work of Police Housing Scheme which was executed by the respondent as deposit work for the Police Department. The services of the petitioner were required to be disengaged as and when the work is completed.

3. That the contents of Para -3 of the petitioner are admitted to the extent that the petitioner approached the Hon'ble Tribunal by way of filing the O.A. NO.1329/2000 and the Hon'ble Tribunal had directed the respondent to reengage the applicant in the same post from where his services were terminated. The order of disengagement was quashed as the respondent had not paid amount of compensation along with the notice, to the petitioner.

4. That the contents of Para-4 are admitted to the extent that the petitioner approached HP State Administrative Tribunal against the termination order and the Hon'ble Tribunal had held that application pertains to the Industrial Dispute and the Tribunal had no jurisdiction to hear the matter. Rest of the contents of para are wrong and denied. It is specifically denied that the services of the petitioner were terminated without following due process of law in so much so the mandatory provision of Section 25-F of the Industrial Dispute Act, 1947. In fact the respondent No.2 has served notice of retrenchment to the petitioner vide letter dated 28-7-2001 along with the retrenchment compensation and the said notice was received back. A copy of notice sent to the petitioner is submitted herewith as Annexure –R2. It is further submitted that the respondent No.3 has sent letter to the petitioner intimating that the retrenchment compensation was sent to the petitioner which was received back with remarks of the postal authority that the addressee is not available at home. Therefore, the petitioner was requested vide letter dated 6.9.2001 to attend the office of the respondent No.3 on any working day to receive the amount of compensation in cash. The said letter has been received back with the remarks "refused/returned to sendee". A copy of the letter dated 6.9.2001 along with copy of envelope are submitted herewith as Annexure R3 & R4. Therefore, the petitioner has intentionally evaded to receive the compensation. The proceedings were initiated by the Inspector-cum-Conciliation Officer, Mandi. The respondent No.2 in the reply submitted that the applicant was engaged for a specific No.2 in the reply submitted that the applicant was engaged for a specific work/period and his services were terminated after completing the mandatory formalities under relevant provisions of the law on completion of the job i.e. completion of buildings/quarters against Police Housing Scheme as a deposit work. However, reply to ground a to f are as under:-

*Ground (a) to (f)*

1. That the contents of grounds (a) to (f) are wrong and emphatically denied. It is specifically denied that the services of the petitioner have been put to an end by the oral orders on

3rd September, 2001 is, illegal, highly unjust, arbitrary and against the mandate of the Industrial Dispute Act. and the rules frames there under. It is submitted that the petitioner was engaged for a specific job and for a specific period against construction of buildings under Police Housing Scheme. The deposit works when came to an end, there was not work left to the petitioner. The petitioner was reengaged on the directions of the Hon'ble Tribunal because of the fact that mandatory provision of law were not followed while terminating the services of the petitioner. The petitioner was engaged as per the order of the Hon'ble and he remained without any work. As such, the services of the petitioner were dispensed with strictly as per the provisions of the relevant law. Therefore, the provisions of Section 25-F of the Industrial Dispute Act, 1947 have not been violated as alleged. The "Principle of last come first go" has been followed. Therefore, the allegation of the petitioner are not tenable. In view of the submissions made above, it is therefore prayed that the petition may kindly be dismissed with cost in the interest of justice".

The claimant instituted a rejoinder to the reply of the respondents and contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced ad-verbatim hereinafter:-

"1. In rejoinder to para-1 of the reply the averments made in para-1 of the claim petition is reasserted and reaffirmed.

2. That the contents of para -2 of the reply which is not admitted by the respondent is wrong, incorrect and hence denied. In rejoinder thereto, it is submitted that the Annexure R-I cannot be used against the petitioner being unconstitutional as is violative of Articles 14 and 16 of the Constitution of India, in so much so the same was executed under compalling circumstances where on the one hand the petitioner being unemployed was /is hopeless condition while the respondent was having upper/dominate bargaining condition. The aforesaid documents is not relevant in so far as the deployment of the petitioner in other different scheme/ projects being run by the respondents throughout the State where the services of the petitioner can be utilized on the strength of his experience /qualification. The respondent utilized the services of the petitioner after the completion of the Police housing scheme at Gohar, Distt. Mandi in different scheme and even when the said scheme was subsisting his services was illegally terminated. Although the junior persons named in the petition in this paragraph scheme and even when the said scheme was subsisting his services was illegally terminated. Although the junior person named in the petition in this paragraph was allowed to work consequently the termination order is illegal, void abinitio.

3. That the contents of this para are admitted, calls for no rejoinder.

4. That the contents of para -4 of the reply except the admitted statement of the respondent, is wrong incorrect, hence denied. The corresponding statement made in para-1 of the claim petition are reasserted and reaffirmed. Apart from this, it is specifically denied that the respondent at any point of time had denied that the respondent at any point of time had sent any notice contemplated in Annexure-RII to the petitioner. Similarly it is wrong and denied that the petitioner was at any point of time directed by the respondents for the acceptance of retrenchment of compensation. The facts remain that even till date no retrenchment compensation has either been deposited in this Hon'ble Tribunal or has been paid to the petitioner and the alleged plea of Annexure R-III and R-IV is taken in order to frustrate the lawful claim of the petitioner. The petitioner humbly submit that the respondent is still having number of projects of scheme in the State where the services of the petitioner can be drived and he is more concerned about his re-employment in the event when the when the respondent has retained /hired junior /fresh hand for the execution of the work of new schemes/projects.

5. That the contents of reply to grounds a to f are not admitted and the submissions made in the corresponding para are reasserted and reaffirmed.

It is, therefore, most respectfully prayed that the said rejoinder may be taken on record and the petition may kindly be allowed with costs, in the interest of justice."

On the pleadings of the parties, this Tribunal framed the following issues have been struck between the parties at contest.

4. Whether the petitioner is retrenched by the respondent w.e.f. 1.8.2001 in violation of he mandatory provisions of Industrial Disputes Act, is illegal and unjustified? OPP

5. If issue No.1 is proved in affirmative to what service benefits and amount of compensation the petition is entitled to? OPP

6. Whether the petitioner was engaged for a specific work i.e. construction of the Police Housing Scheme and the service of the petition was disengaged on the completion of said work? If so, its effect? OPR

7. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No.1 : Yes
Issue No.2 : Reinstated in service without back wages.
Issue No.3 : No
Issue No.4 : As per operative part

REASONS FOR FINDINGS

*Issue No.1&2*

In proof of the contentions and averments as asserted by the claimant in his claim petition the claimant has taken to depend upon his affidavit Ex. P1 tendered into evidence during the course of his examination-in-chief. However, it cannot be imputed credibility being merely the bald testimony of the claimant uncorroborated by any potent documentary evidence. On the other hand the respondent in support of their assertions in their reply have depended upon the testimony of RW1, who, has deposed about the factum of notice of disengagement of the claimant from service, having come to be served upon the claimant thereby begetting compliance, with, the provision of section 25-F (a) and (b) of the Industrial Disputes Act as, the, factum of despatch to the claimant of notices is borne out by exhibits bearing Exhibits RA and RB, though theirs being returned by the postal authority to the employer with the endorsement in them yet, on their strength compliance with the mandatory statutory provision is sought to be urged.

In the light of the fact that the respondents have taken, to, in very vehement and unequivocal terms come to contend that the notice of retrenchment as envisaged by clause (a) of the provision of section 25-F, as also, its being accompanied by the retrenchment compensation as payable to the claimant under the provision of clause (b) of the section 25-F of the Industrial Disputes Act came to be served upon the claimant, inasmuch, as, such an inference of the claimant having come to be served or deemed to having been served is sought to asserted in the light of the endorsement of the postal authorities, signifying, a, refusal or acceptance of the envelopes purportedly containing the notice, by, the claimant from the postal authorities, hence, it is atleast evident from the vehement assertions made in the above regard by the respondent that the claimant was entitled to receive the notice as envisaged in clause (a) and (b) of the section 25-F of the

Industrial Disputes Act. In other words there is in the above contention imbued a tacit admission of the respondent that the claimant had come to render 240 days of continuous service under the respondent as envisaged by the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter inasmuch, as, contemplated by the provisions of section 25-B of the Industrial Disputes Act while defining "continuous service", hence, he came to render the period of qualifying service as envisaged, therein, in, the 12 calendar months proceeding his disengagement by the respondent. As such, then only he came to be entitled to receive protection of the provision of section 25-F (a) and (b) of the Industrial Disputes Act from the respondent who have then asserted its compliance.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(y) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(z) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(aa) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(q) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(xvii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xviii) two hundred and forty days, in any other case;

(r) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(xvii) ninety-five days, in the case of workman employed below ground in a mine; and

(xviii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xxv) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxvi) he has been on leave with full wages, earned in the previous years;

(xxvii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

In the light of a pointed contest between the parties, confined squarely to the factum of the respondent as asserted by them of their having achieved compliance with the provision of section 25-F (a) and (b) of the Industrial Disputes Act, inasmuch, theirs, having come to effectuate, through, the postal authority, to, whom the notice of retrenchment as well as retrenchment compensation accompanying it was delivered for onward effectuation of service upon the claimant by the respondent, who, despite having been approached by the official of the postal authorities refused, to, accept service, hence, such refusal tantamounts to deemed effectuation of service of notice in, accordance with law upon the claimant, of, both the notices of retrenchment as well as of retrenchment compensation, hence, such deemed service has begotten compliance, then, with the provision of section 25-F (a) and (b) of the Industrial Disputes Act. On the other hand the ld. counsel for the claimant has asserted that a bare perusal of and an analysis of the report of the postal authorities, made by the respondent, in, the light of Exhibit RW2/A, which, is a letter addressed to the claimant by the official of the respondent, while, comprising an appreciation by the respondent of the endorsements made by the concerned official of the postal authorities to whom the notices were despatched for delivery to the claimant, and with its reciting that since there has been failure to effectuate the service of the said notices, though, comprising purported compliance by the respondent with the provision of laws, inasmuch, as service could not come to be effected for the reason “addressee not available at home” the said ground cannot, obviously, when negated by Ex. RW2/A at all, be taken to be a refusal of service by the claimant as contended by the respondent, hence, when their is an abysmal lack of potent evidence to support the assertions of the respondent that on ground of such refusal their is be garnered a ensuing presumption or inference of deemed service upon the claimant from which a concomitant inference of compliance by the respondent with the mandatory statutory provision is to be mobilized, the, said assertion gets emasculated.

The above contentions the ld. counsel for the contesting parties have been very seriously considered by me.

What further constrains me to reject the submission of the ld. counsel for the respondent and accept the submission of ld. counsel for the claimant for the reason that as contended by the ld. counsel for the respondent is that even if Ex. RW2/A which are the letters addressed by the official of the respondent to the claimant, reciting, the reason for non serving of the notice despatched to the postal authorities for service upon the claimant, in purported compliance with the mandatory statutory provision while, being, the one of such service having, not, for reason of his absence from home come to be effected upon the claimant, hence, in the light of the contents in Ex. RW2/B, and

its signifying the reasons accorded by the respondent for the claimant not having come to be served , hence, the necessity of a request to him as detailed in Ex. RW2/B that he come to the respondents office on any working day, cannot, but, constrain me to disagree with the respondents contention that their has been, no, failure on its part to serve the claimant with both the retrenchment notice and the retrenchment compensation through the mode of the postal Agency as envisaged by the provision of section 25-F of the Industrial Disputes Act, consequently, they are to be taken to have failed to achieve compliance with the mandatory statutory provision preceeding the disengagement from service of the claimant by the respondent. Resultantly his disengagement has to be taken to be illegal entitling the claimant to be reinstated in service.

It is also contended on behalf of the claimant that their has borne by the respondent infraction of the principle of 'Last come First Go' as envisaged and comprised in the provisions of section 25-G of the Industrial Disputes Act which provisions are extracted hereinafter, inasmuch, as, the person junior to the claimant namely Manoj Kumar as recited Ex.PW1 had came to be retained by the respondent at the time contemporaneous to the disengagement from service of the claimant, resulting in invalidating the disengagement from service of the claimant by the respondent. The ld. counsel for the respondent though may have chosen to elicit an affirmative response from the respondent during the course of his cross-examination of the claimant by the counsel for the respondent yet, the claimant denied the said suggestion sought to negative the assertion to the said fact in affidavit Ex. PW1. Now with RW1 deposing in his cross-examination that the seniority list qua category of workman engaged by the respondents comprising the claimant, also, has been prepared which he had not brought in Court along with him, as also, when he has deposed that he is unaware of any persons along with the claimant having been retrenched by the respondent, in my, view is a very feeble and shaky attempt of the respondent to repulse the evidence as exhibited in the affidavit of the claimant bearing Ex. PW1, especially, when with the best evidence available with respondents, comprising, the seniority list and its, also, disclosing the date of disengagement of various workman belonging to the same trade as the claimant having or having not come to be disengaged at the time contemporaneous to the disengagement from the service of the claimant by the respondent, so as to draw the conclusion about the provisions of section 25-G of the Industrial Disputes Act having come to be complied with or not by the respondent employer, hence, when the best evidence as stated hereinabove has not been adduced, a, conclusion can be drawn especially when there is no unequivocal evidence, though, available qua the retention of seniors to the claimant, it, has then to be concluded that Manoj Kumar named in Ex. PW1 is not senior to the claimant or that his service were also not dispensed with at the time contemporaneous to the disengagement from service of the claimant by the respondents, hence, concomitantly it is to be inferred that the respondents did violate the mandatory provisions of section 25-G of the Industrial Disputes Act, hence, invalidating the disengagement from service of the claimant. Issues decided accordingly.

*Issue No.3*

The respondent have pointedly submitted that since the claimant was engaged for a specific work and since the claimant had filed an affidavit bearing Ex. D1 which is in record in which he has admitted to his having been engaged for specific work on whose completion he had further undertaken to accept his discontinuance service by the respondent, therefore, in light of the provisions of section 2(oo) (bb) whose provisions are extracted hereinafter envisaging that in case workman engaged for specific works for specific period of time on completion of said work the service have to by deemed to come to an automatic end on completion of specific/limited tenure of time thereby relieving the employer from the applying the mandatory statutory provisions before coming to disengage the service of the claimant. However, bearing in mind the fact that the affidavit is executed on October, 1998 whereas the services of the claimant were dispensed with as a matter of fact under Ex. RW1/A in the year 2001 and, that too, in purported compliance with the

provisions of section 25-F of the Industrial Disputes Act, obviously, it is demonstrative of waiver by the respondent employer with condition spelt out in the affidavit Ex. D1as when service of the claimant were engaged beyond the period spelt out in Ex. D1 is significatory of the factum of such waiver or abandonment of the conditions spelt out in Ex. D1, therefore, estopps the respondent employer to contend that the conditions of employment/ engagement of the claimant undertaken by him under Ex. D1 for construing the factum of an automatic cessor on completion of works specific period of time is made out, hence, argument is rejected. Issue decided accordingly.

"Section 2 (oo) (bb) of the Industrial Disputes Act

(oo). "retrenchment" means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

*Relief*

Claim petition allowed. The respondents are directed to reengage the claimant in the same capacity in which he was rendering work for them prior to his disengagement, so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in the light of the fact that the claimant was a seasonal workman, so also, in the light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, when the claim petition is highly belated, the relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced
24.1.2008

SURESHWAR THAKUR,
*Presiding Judge,*
*LabourCourt-cum-IndustrialTribunal,*
*Dharamshala.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL**-CUM-**LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference : No. 509/2004
Presented on : 17-12-2004
Decided on: 29-2-2008

Sh. Maya Ram S/o Shri Lalu Ram, R/o Hatchali, P.O. Shiva Thana, Tehsil Thunag, Distt. Mandi, H.P. . .*Petitioner.*

*Versus*

Regional Manager, Himachal Road Transport Corporation, Kullu, Distt. Kullu, H.P.
. .*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Dinesh Gupta, Adv.
For the respondent : Sh. Lalit Guleria, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

"Whether the termination of services of Shri Maya Ram S/o Sh. Lalu Ram, Ex. daily wages beldar by the Regional Manager, H.R.T.C., Kullu, H.P. *w.e.f.* 27-6-2002 without complying the provisions of the Industrial Disputes Act, 1947 on completion of 240 days of continuous service is proper and justified? If not, what relief of service benefits Shri Maya Ram is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. The above said tiled case has been referred by the Appropriate Government State of Himachal Pradesh for adjudication to the Presiding Officer, H.P. Industrial Tribunal cum Labour Court Shimla vide notification dated 14th December, 2004. The terms of reference is given as under:—

"Whether the termination of services of Shri Maya Ram S/o Sh. Lalu Ram, Ex. daily wages beldar by the Regional Manager, H.R.T.C., Kullu, H.P. *w.e.f.* 27-6-2002 without complying the provisions of the Industrial Disputes Act, 1947 on completion of 240 days of continuous service is proper and justified? If not, what relief of service benefits Shri Maya Ram is entitled to?"

2. That the petitioner was engaged on daily wages as Beldar to do unskilled nature of work by the respondent on 10th June, 1999 in the H.R.T.C. Workshop and continued working continuously in the year, 1999, 2000, 2001 and upto 26.8.2002. The petitioner has worked to the entire satisfaction of superiors and w.e.f. 27.8.2002, the services of the petitioner was terminated without notice and payment of retrenchment compensation, as the petitioner has completed more than 240 days in the preceding twelve months. The said termination without notice and payment of retrenchment compensation is illegal, arbitrarily and against the principles of natural justice.

3. That the respondent has engaged new persons in the job in place of the applicant whose name is not known to the petitioner and there fore this is violation of the provisions of section 25-H of the Industrial Disputes Act, 1947.

4. That the regular work is available with the Regional Manager, H.R.T.C. Kullu and the service of the petitioner have been terminated in order to deprive the petitioner of continuity of service and the right of regularization which the petitioner would have acquired with the passage of time, therefore the termination is illegal on this ground also.

5. That after illegal termination of service the petitioner served a demand notice to the respondent on dated 19.9.2002. The matter was conciliated by the Labour Officer, Mandi Zone,

Mandi. During the course of conciliation, the respondent has not agreed to engaged the petitioner on the condition of daily wages and the conciliation failed due to the stiff attitude of the respondent.

6. That the respondent is a registered factory under the Factories Act, 1948 and the petitioner qualifies the test of "Workman" as defined in the provisions of Industrial Disputes Act, 1947 and Factories Act, 1948.

7. That the petitioner is still unemployed from the date of his termination and the petitioner was getting Rs.2,000/- per month at the time of his illegal termination.

8. RELIEFS:

It is, therefore, prayed that in view of the aforesaid submissions made here in above, the petitioner is entitled to following reliefs and justice be done.

i) That the Hon'ble Court may kindly be pleased to set aside the illegal termination.

ii) That the Hon'ble Court may kindly be pleased to direct the respondent management to reinstate the service of the petitioner workman from the date of his illegal termination with full back wages and continuity of service with interest.

iii) That the Hon'ble Court may direct the respondent to pay the cost of Rs.4,000/-

iv) Any other reliefs may kindly be awarded in the favour of the petitieorn.
The petitioner shall ever pray."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:—

**"Preliminary Objection**

1. That the petition is not maintainable in the present form as such the petition is liable to be dismissed.

2. That the petitioner has suppressed the true and material facts on the Hon'ble Court, therefore, is not entitled for the relief claimed.

3. That the petitioner does not fall under the definition of labourer under Industrial Dispute Act, 1947 and the Factories Act, 1948, as such the petition is liable to be dismissed.

**On Merits**

*Para No. 1.*—Para No. 1 of the petition is admitted to be correct.

*Para No. 2.*—Para No. 2 of the petition is not admitted to be correct. The petitioner was never engaged as Beldar by the replying respondent as alleged in Para No.2. The contents of this para are false and frivolous because the petitioner has not filed any documents in support of his claim and hence the present petition is liable to be dismissed. The question of payment of any compensation to the petitioner does not crop-up as he was never engaged by the respondent. In fact he had earlier verbally entered into a contract as labourer for washing of curtains and seat caps/covers of deluxe buses and loading/unloading of materials of HRTC as and when required and for the work he had never been paid the labour charges and that now he has no right to claim paid wages/labour charges.

*Para No. 3.*—Para No. 3 of the petition is not admitted to be correct and is on false facts. In fact the applicant never turned up and despite the work which was to be completed by him, the respondent had no contact number or any address of the petitioner and in that event the respondent was compelled to get the work completed by other persons.

*Para No. 4.*—Para No. 4 of the petition is not admitted to be correct as it is the prerogative of the respondent to engage any labourer for the work available and the petitioner has no legal right for any claim whatsoever. In fact the petitioner has concealed the read facts and has not come to this Hon'ble Court with clean hand. The petitioner had claimed to have been appointed as Chowkidar by the respondent vide application dated 16.8.2002 received to the special personal secretary to the Hon'ble Transport Minister at that time. The petitioner has no claim as he is knowing hot and cold in the same breath.

*Para No. 5.*—Para No. 5 of the petition is not admitted to be correct as the petitioner was never engaged on daily wages, but he was at times given verbal contract of ashing curtain, seats cover of the deluxe buses along with loading and unloading. No notice was served upon the respondent by the petitioner.

*Para No. 6.*—Para No. 6 of the petition is admitted to be correct till the extent that the respondent is registered factory under the Factories Act, 1948. Rest of the para is not admitted to be correct as applicant was never engaged as labourer with the respondent.

*Para No.7.*—Para No. 7 of the petition is not admitted to be correct for want of knowledge.

*Para No. 8.*—Para No.8 Sub Para (i) to (iv) of the petition are not admitted to be correct as the petitioner is not a labourer under the definition of the Act and further the petitioner is not entitled for any kind of relief against the replying respondent.

It is therefore, prayed that the petition is not maintainable and the petitioner is not entitled for any compensation from the respondent and the same is liable to be dismissed, be dismissed in the interest of justice."

The claimant contested the Reply of the respondents and filed a rejoinder. The contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced adverbatim hereinafter:—

**"Preliminary objection:**

1. Averments made in para 1 is wrong and the same is denied.
2. Averments made in para 2 of the preliminary objection is wrong and the same is denied.
3. Para 3 of the reply of preliminary objection is not admitted. The petitioner is very much covered as workman within the definition of workman as defined in the Industrial Disputes Act, 1947.

**Rejoinder on merits.**

1. Para 1 of the reply requires no rejoinder being admitted by the respondent.

2. Contents of para no.2 of the reply is again wrong. The relevant documents produced before the Labour Officer, Mandi Zone, Mandi by the respondent during the course of conciliation is attached as Annexure. This Annexure contains the copy of letter No. H.R.T.C. Kullu-EMaya Ram Versus H.R.T.C./2232 dated the 10th February, 2003

along with monthly receipts of payments obtained from the petitioner by the respondent. The last receipt of payment for the month of July, 2002 has been obtained by the respondent and the English version of that receipt is reproduced as under:—

**"Receipt"**

Received Rs. 2000/- (Rs.Two thousand only) as wages for the month of 7/2002 on account of washing of Delux and semi deluxe buses seat caps and curtain and loading and unloading carriage of spare parts from Buses to store from Regional Manager, H.R.T.C. Kullu.

Sd/-
Maya Ram s/o Lalu Ram
Stamped receipt.

"verified for Rs.2000/- (Rs.Two thousand only) on account of washing of seat cap of deluxe and semi deluxe buses and carriage of all types of loading and unloading of spare parts in Regional store for the month of 7/2002.

Sd/-
Verifying authority.

The perusal of documents enclosed in the annexure would mean that the petitioner was employed to do the work of unskilled job and the mode of payment was monthly. The plea of the respondent that verbally contract was entered, is not admitted. The petitioner has worked from 6/99 to 26th August, 2002 and has worked for more than 240 days in the preceding twelve months as would appear from the annexure. The petitioner has worked for full month w.e.f.6/99 to 26.8.2002. The services have been allegedly terminated *w.e.f.* 27-8-2002 without notice and payment of retrenchment compensation.

3. Averments made in para No.3 of the reply not admitted. Junior persons were engaged in place of the petitioner.

4. Averments made in para 4 of the reply is not admitted. Averments made in original statement of claim para is true.

5. Contents of para No.5 of reply is not admitted.

6. Para No. 6 of the reply is admitted to the extent that the respondent is registered factory. Rest of the contents of para are wrong and not admitted.

7. Para No. 7 of the reply is again not admitted. The contents given in para 7 of statement of claim is true.

*Para No. 8.*—Para No.8 of the reply is also not admitted. The petitioner is a workman as defined within the purview of Industrial Disputes Act, 1947 and the petitioner is very much entitled for relief of reinstatement with backwages and seniority.

Prayer para is also wrong.

It is, therefore, prayed that the claim of the petitioner for reemployment with back wages and seniority be allowed and justice be done for which the petitioner shall ever pray."

**On the pleadings of the parties, this Tribunal framed the following issues:**

1. Whether the service of the petitioner was terminated by the respondent *w.e.f.* 27-8-2002 without complying the provisions of Industrial Dispute Act in an improper and unjustified manner as alleged? OPP

2. If issue No.1 is proved in the affirmative to what service benefits the petitioner is entitled to? OPP

3. Whether the petition is not maintainable in the present form? OPR

4. Whether the petitioner has suppressed the material facts, if so, its effect? OPR

5. Whether the petitioner does not fall within the meaning of workman, if so, its effect? OPR

6. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No. 1 | No |
| Issue No. 2 | No |
| Issue No. 3 | Not pressed |
| Issue No. 4 | Not pressed |
| Issue No. 5 | Not pressed. |
| Issue No. 6 | Claim petition dismissed. |

## REASONS FOR FINDINGS

**Issues No. 1 and 2**

Since both these issues are interlinked, hence, taken up together for determination.
In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, consequently, with their being lack of evidence demonstrative of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act, for, the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

Further the respondent has depended upon the testimony of RW1 for enabling me to determine the issue relating to no necessity of compliance by it with the provisions of section 25-F of the Industrial Disputes Act, 1947, besides, it is, necessary to keep in mind that indispensable requirement enshrined in the provisions of section 25-F of the Industrial Disputes Act.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(bb) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(cc) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(dd) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B).** Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer:—

(s) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

(xix) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xx) two hundred and forty days, in any other case;

(t) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

(xix) ninety-five days, in the case of workman employed below ground in a mine; and

(xx) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which.—

(xxviii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxix) he has been on leave with full wages, earned in the previous years;

(xxx) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Since in proof of non compliance by the respondent with the provisions of section 25-F of the Industrial Disputes Act the claimant has depended upon the sole testimony which has remained

uncorroborates, hence, not reliable. On the other hand the respondent depended upon the testimony of RW1. However, in the light, of, burden of proving the issue of non compliance by the respondent with the provisions of section 25-F of the Industrial Disputes Act being laid upon the petitioner and when he has been unable to discharge the said burden, as, he has neither adduced any documentary evidence during the course of his examination-in-chief to under score the factum of non compliance with the provisions of section 25-F of the Industrial Disputes Act nor has chosen to by an appropriate measure inasmuch, as, his coming to seek adduction of records qua rendition of the qualifying period of service by him under the respondent, so as entitle him to the said benefits, hence, the burden has remained undischarged, therefore, the issue ought to be decided against him. Issues decided accordingly.

*Issue No. 3 ,4 and 5*

During the course of argument these issues were not pressed before me, hence, these issues decided as unpressed.

**Relief**

Claim petition is dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced : 29-2-2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial*
*Tribunal, Dharamshala.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-**CUM-**LABOUR COURT, DHARAMSHALA, DISTT. KANGRA H.P. (CAMP AT MANDI)**

Reference : No.103/2005
Presented on : 19.11.2007
Decided on : 29.2.2008

Sh. Kashmir Singh S/o Shri Chamaru Ram R/o Village Padhar, P.O. Majhwar, Tehsil, Sadar Mandi, Distt. Mandi, formerly D/W Beldar in HPSEB Elect. Division MANDI, Distt. Mandi

. .*Petitioner.*

*Versus*

Executive Engineer, HPSEB, Electrical Division, MANDI, Distt. Mandi, H.P.

..*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. T .C. Sharma, Adv.

For the respondent : Sh. J.S. Chauhan, Adv.

AWARD

The hereinafter extracted reference has been received for adjudication for the rendition of an award by this Tribunal:

> "Whether the termination of services of Shri Kashmir Singh S/o Shri Chamaru Ram workman by the Executive Engineer, HPSEB, (Electrical) Division, Mandi, H.P. *w.e.f.* 18-2-2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If, not, to what relief of consequential service benefits including reinstatement, seniority, backwages and amount of compensation the above aggrieved workman is entitled?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

(i) That the Petitioner is a permanent resident of village Padhar, P.O. Majhwar Tehsil Sadar Mandi, Distt. Mandi H.P. and was holding a post of Beldar under respondent Board in HPSEB Mandi Division.

(ii) That the petitioner was initially engaged as a Beldar on daily wages by the respondent Board *w.e.f.* 2nd JULY, 1998 and he continued as such till 17th FEB., 2000 with fictional/casual breaks, thus he was not allowed to complete 240 days in the preceding 12 months/service year because he was not issued muster-roll during fictional break/absence whereas his juniors were issued regular M/Roll by the respondent Division office prior to his illegal termination.

(iii) That the petitioner was initially engaged as a Beldar on daily wages in the respondent Board since JULY, 1998 under HPSEB Mandi-II Elect. Sub Division Mandi under MANDI Division and continued as such till 17th FEB., 2000 with fictional breaks in Electrical Division MANDI and thus has completed more than 240 days in service year 98-99 and 100 days in the preceding 12 months/service year prior to his illegal termination, but he has not been assigned seniority at Divin. level.

(iv). That the work and conduct of the Petitioner had been above board and there was/is no compliant/enquiry or anything adverse against him in any manner which warrants his untimely termination that too without following the procedure.

(v) That the services of the Petitioner have been terminated wrongly, arbitrarily and illegally by the Executive Engineer, HPSEB MANDI on 17th FEB, 2K all of a sudden by an oral order and without assigning any reason and without serving the notice as required under rule 14(2) of Standing Orders of HPSEB and also without assigning seniority under Sec. 25-H of I.D. Act, 1947 although an advance notice was served by the A.E. Sub Divn. No.II Mandi wherein Executive Engineer Mandi was requested to engage the applicant against some on going work but the applicant was not engaged and three Beldars namely Smt. Uma Devi W/o Parminder Kumar 2. Surinder Kumar S/o Sh. Sewak Ram 3. Jagdish Kumar s/o Sh. Jeewan Singh who are juniors to the applicant were retained and no muster roll has been issued in favour of petitioner while retaining junior during fictional/casual breaks given to the petitioner just not a complete 240 days in a year while juniors were allowed to complete 240 days by issuing M.Roll in their favour and their names have also been included in the seniority whereas the petitioner has not been assigned any seniority.

(vi) That ever since his appointment i.e. 1998 the Petitioner worked as Beldar on daily wages in Sub Division Mandi-II HPSEB Electrical Division MANDI and at the time of illegal termination some juniors named in above para who were engaged subsequently and few other

Beldars were retained under Sub Divisions & Division MANDI under Respondent who were/are junior to the Petitioner.

(vii) That the order of termination without assigning any reason and without serving notice as required under rule 14(2) of HPSEB Standing Orders as notified by the respondent Board and also being oral is arbitrary, illegal and discriminatory, as such the same is liable to be quashed and set aside in the interest of justice and fair play.

(viii) That juniors to the Petitioner is continuously working ignoring the Petitioner who is senior and an appointee of the year 1998 as such the termination has been ordered by adopting "pick and method" under the influence of the then local politician and also ignoring the principle of LAST COME FIRST GO to the utter disadvantage of the Petitioner who is facing forced unemployment since then and as such is eligible and entitle for back wages.

(ix) That the work for which the Petitioner was engaged is of a permanent nature which requires the services of Petitioner for all the time to come but instead of assigning seniority and also regularizing the services of the Petitioner the services of the Petitioner have been terminated while the Petitioner remained under them for the last about 3 years, hence the termination is arbitrary, illegal and discriminatory one which is not tenable in the eyes of law. Hence the Petitioner has come before the Ld. Court to hand down justice on the following amongst other grounds:—

*GROUNDS.*—(A) the petitioner has not been served any notice by the competent authority as required under Sec. 25-F of I.D. Act, 47 and rule 14(2) of Standing order.

(B) the Petitioner has not completed more than 240 days in a service due to non issuance of M/Roll earlier and 100 days in the preceding service year/12 months.

(C) the termination is illegal and arbitrary and is ordered by adopting pick and choose method and also without following the mandatory provisions of law.

(D) the juniors to the Petitioner have been retained ignoring the principal of LAST COME FIRST GO.

**7. RELIEF(S) SOUGHT.—**In view of the submissions made above in preceding paras of the application, the Petitioner prays for the following reliefs:—

I. That the Respondent may kindly be directed to re-engage/reinstate the Petitioner in service from the date of his illegal termination.

II. That the respondents may kindly be directed to assign seniority and regularize the services of the Petitioner and also pay back wages for forced unemployment due to illegal termination *w.e.f.* 18th FEB, 2000.

III. That the entire original record of the case viz. Muster Roll etc. etc. be summoned and the respondent be burdened with cost of this application.

IV. Any other order/direction which the authority deem just and proper in the interest of justice and fair play may kindly be passed/issued in favour of petitioner".

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:

**"PRELIMINARY OBJECTIONS:**

1. That no legal or vested rights of the petitioner herein have been violated or infringed by the replying respondent in any way or in any manner so as to entitle him to file & maintain the present petition.

2. That the petitioner herein is estopped to file & maintain the present petition in view of the Act, conduct & acquiescence. This being so, the petition is not maintainable & deserves to be dismissed.

3. That the present petition is patently time barred & this being so the reference petition deserve to dismissed.

4. That the petition has not been properly instituted/constituted and the same is bad on account of non-joinder and mis-joinder of the necessary parties.

**PARA WISE REPLY:**

1. That the contents of para No.1 of the petition being legal needs no reply however the petitioner is not entitled to any relief as claimed.

(i) That the allegations of this para of the petition are admitted to the extent of his residential address rest of para is totally wrong, hence denied. It is wrong that the petitioner was holding any post of beldar as alleged but he was a casual beldar.

(ii) That the averments made in this para of the petition are totally wrong, hence denied. However it is submitted that the date of engagement and disengagement mentioned in this para is wrong, incorrect, hence denied. In fact the petitioner was engaged as causal labourer on 18.05.1995 and remained upto 24.11.1996 with certain breaks and willful absence at his own and remained absent from the work without intimation to the respondent. It is denied that the respondent has not allowed him to complete the 240 days by giving the fictional breaks.

(iii) That the allegations contained in this para are absolutely wrong, incorrect hence denied in view of the reply submitted in para supra. The date of engagement and disengagement mentioned in this para is wrong, in fact the petitioner was initially engaged as beldar *w.e.f.* 18-05-1995 to 24-11-1996 against the work which was casual in nature with certain interruptions & willful absence on the part of the petitioner. That rest of the para is incorrect, wrong, hence denied. IT is wrong & denied that the petitioner has completed 240 days in a calendar year. The mandays chart of the petitioner is annexed as ANN. R-1. It is further submitted that the petitioner used to remain willfully absent from the job & after 24.11.1996 he abandoned the job at his own & did not turn up for duty after 24-11-1996. It is wrong & denied that no Muster Roll was issued to the petitioner. It is submitted that the replying respondent has not dispensed with the service of the petitioner rather he has left the job at his own. It is further submitted that after leaving the service by the petitioner at his own *w.e.f.* 24-11-1996 the petitioner neither made any representation for his reengagement in the service/job the replying respondent nor he has approached the replying respondent personally for the same. Since the petitioner was not working continuously & as such has not attained the status of permanent workmen due to his own negligence & willful absence from the job, therefore his name was not assigned in the seniority list.

(iv) That the averments made in this para of the reference petition are wrong, hence denied. It is however submitted that the petitioner was habitual to remain absent from the job as stated above & as such his act & conduct was not satisfactory.

(v) That the allegations contained in this para of the petition are frivolous, incorrect hence denied in view of the detailed reply submitted in para supra. It is also wrong that the service of the petitioner was orally terminated without assigning any reason, as stated above he has left the job without giving any intimation to the respondent and he himself is negligent and for this negligent act of the petitioner the respondent is not liable. It is also wrong, incorrect that the respondent has violated any provision of standing order and I.D. Act. It is also wrong and denied that juniors to the petitioner are entertained.

(vi) The contents of this para of the reference petition are totally wrong, incorrect hence denied in view of the detailed reply submitted above.

(vii) The allegations made in this para of the petition are wrong, hence denied in view of the detailed reply submitted above. The petitioner has abandoned the job at his own, therefore the question of serving the notice U/R 14 (2) of Standing Order does not arise. Rest of the averments are totally wrong hence denied.

(viii) Allegations contained in this para of the petition are totally wrong, incorrect hence denied. The principle of "Last Come First Go" can not be applied to the petitioner as stated above that the petitioner has left the job at his own sweet will. It is further submitted that no Junior persons have been engaged by the respondent.

(ix) Averments made in para No. ix of the petition are wrong, incorrect hence denied in view of the detailed reply given above. It is also denied that the petitioner was engaged for work of permanent in nature also which is clear from ANN.R1. It is also incorrect that the petitioner had worked for 3 years continuously. The petitioner has suppressed the true facts before this Ld. Tribunal and as such he is not entitled to any claim. However, it is submitted that the respondent has presently no work and sufficient work charge and labour are already available for doing the urgent work of the respondent.

**REPLY TO GROUNDS:**

That the contents of grounds mentioned in paras A to D are totally wrong, incorrect, hence denied, in view of the detailed reply submitted in para supra.

**REPLY TO RELIEF(S) SOUGHT:**

I. & II. The contents of paras No.I &II of the relief are totally wrong, incorrect, hence denied. The petitioner is not entitled any relief as claimed in these paras.

III. This para of the relief needs no reply. However, the respondent cannot burdened with cost as the present petition is not maintainable & deserves to be dismissed.

IV. That the contents of this para are wrong, incorrect, hence denied. The petitioner is not entitled to any relief as prayed for in view of the detailed reply submitted supra.

An affidavit is attached herewith.

It is, therefore, respectfully prayed that in view of the submissions made above this reference petition may kindly be dismissed & justice be done for which the replying respondent shall ever pray".

The claimant instituted a rejoinder to the reply of the respondent and contents of rejoinder as furnished by the claimant to the reply of the respondent are reproduced ad-verbatim hereinafter:—

*"Preliminary Objections*

1. That applicant is facing forced unemployment at the instance of respondents as such entitle to maintain the present applicant.

2. That the applicant is not estopped to file the present claim since the reference has been made through Labour Officer-cum-Conciliation authority Mandi, by the Labour Commissioner, H.P. Shimla.

3. That the applicant is within the limitation since the reference has been made after conciliation failed which took sufficient time.

4. That the application/claim of the petition is properly instituted by impleading necessary party and there is no mis-joinder and non-joinder of necessary parties as contended under this para of reply.

**On merit:**

Para-1 That the averments made in reply to the corresponding para is admitted being legal needs no rejoinder.

(i) That the averments made in reply to this para is wrong since the petitioner was holding the post of Beldar although on daily wages.

(ii) That the averments made in reply to this sub para is wrong, and contrary to the averments made in the claim, hence denied. The applicant never abandoned the job as averred rather he was not issued any muster roll during fictional/casual breaks and he was initially engaged on 2nd July, 98 and not on 18.5.96 till 24.11.96 as averred & continued till 17th FEB, 2K and as such reply to this para is absolutely wrong and contrary to record as well as pleading made under the claim. Further the list of mandays chart has not been supplied with the reply as such the original muster rolls may be called for ascertaining the truth and the averments made under the corresponding para is re-affirmed.

(iii) That the averments made in reply to this sub para is wrong, hence denied. The applicant never remained willful absent and never left the job of his own as averred rather he was not issued any muster-roll during fictional/casual breaks due to which the petitioner could not complete 240 days. Further the petitioner never served during 95-96 as averred and Annexure R-1 has also not been supplied with the reply, as such averments made under, this para in the claim are re-affirmed.

(iv) That the averments made in reply to this sub-para is wrong, hence denied. The applicant never remained absent but he was not issued muster roll when his juniors were retained in service as such the averments made in the claim under this para are re-affirmed.

(v) That the averments made in reply to this sub-para is wrong, hence denied. The applicant never remained absent and never left the job without giving any intimation as averred in reply to this para which his quite contrary to the averments made under the corresponding para, but he was not issued muster roll when his juniors were retained in service as such the averments made in the claim under this para are re-affirmed since no muster roll has been issued in favour of applicant during break period due to which the applicant never completed 240 days whereas junior to him were issued muster –roll ignoring the principle of “Last Come First Go”. Further annexure R-2 & R-3 has not been supplied to the applicant with the reply, hence the averments made under this para are re-affirmed.

(vi) That the averments made in reply to this para is wrong as such denied and the averments made under the corresponding para is reaffirmed in view of the submissions made and names of juniors given in the preceding para of this rejoinder.

(vii) That in reply to this para the respondent has averred that the petitioner has abandoned the job at his own which is wrong and incorrect and the provision has been violated since no notice as required under rule 14(2) of HPSEB Standing order has ever been served to the applicant in any manner as such the averments made under the corresponding para is reaffirmed.

(viii) That the respondent in reply to this para has denied that the junior persons has been engaged whereas the petitioner has specifically mentioned the names of juniors under para

(v) above which has not been rebutted in reply and the petitioner never left the job at his own as averred in reply to this para as such the averments made under the corresponding sub para is re-affirmed which can be confirmed after verifying the original muster-roll and other relevant record pertaining to juniors as well as of the petitioner.

ix) That the averments made under para are re-affirmed, in view of submission made in the preceding paras of rejoinder. Further the Annexure R-1 showing mandays char/scheme of particular work has not been supplied to the petitioner with the reply, hence the grounds taken under para A to D of the corresponding para are re-affirmed.

**RELIEF(S) SOUGHT:**

In view of the submissions made above in preceding paras of this rejoinder as well as in the application, the applicant may kindly be granted the relief claimed under the corresponding relief para of the claim petition.

It is, therefore, prayed that the claim preferred by the applicant may kindly be allowed and justice done".

*On the pleadings of the parties, this Tribunal framed the following issues:*

1.Whether the disengagement from the service of the claimant is in accordance with law? OPP.
2. If the above issue is in affirmative to what relief to the claimant is ntitled? OPP.
3. Whether the reference is stale, hence not maintainable? OPR.
4. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 No
Issue No. 2 No benefits
Issue No. 3 Not pressed
Issue No. 4 Claim petition dismissed.

**REASONS FOR FINDINGS**

*Issue No. 1 and 2*

The instant case has been received by way of remand from Hon'ble High Court of H.P. *vide* its order dated 30-10-2007 while deciding the CWP No. 880 of 2007 which CWP came to be instituted before it against the Award rendered by this Tribunal in Reference No. 103/2005.

In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continuous service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RW1/A which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then, when with their being even breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable otherwise also being wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered also when there is no conclusive evidence to believe the view of the respondent that he was engaged against works purely casual nature existed in period of time, while intermittently ceasing the engagement of the claimant on such cessor of works hence, the intermittent cessor in the engagement of the claimant under the respondent is to be imputed to his abstention from work and not to only intentionally administered fictional illegal breaks. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Ex. RW1/A achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with its demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

**25F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(ee) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(ff) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(gg) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B). Definition of continuous service.—***For the purposes of this Chapter:*

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.

(u) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.

(xxi) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xxii) two hundred and forty days, in any other case;

(v) for a period of six months, if the workman, during a period of six calen-dar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.

(xxi) ninety-five days, in the case of workman employed below ground in a mine; and

(xxii) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xxxi) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxxii) he has been on leave with full wages, earned in the previous years;

(xxxiii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

No evidence has been placed on record during the course of examination-*in*-chief of the claimant qua the retention of juniors, hence, for lack of adduction of best evidence by petitioner, when the burden proving the said fact by way of adduction of seniority list of workman under the respondent highlighting the factum of retention of juniors to the claimant at the time contemporaneous to the disengagement from service of the claimant, was laid upon him and when he has been unable to discharge the said burden, it is to be concluded that the finding on the said issue ought to be against the petitioner. Issues decided accordingly.

*Issue No. 3*

During the course of argument this issue was not pressed before me, hence, this issue decided as unpressed.

*Relief*

Claim petition dismissed. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced : 29-2-2008

SURESHWAR THAKUR,
*Presiding Judge,*
*LabourCourt*-cum-*Industrial Tribunal, Dharamshala.*

**BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-**CUM-**LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference : No 66/2005
Presented on : 1-6-2005
Decided on : 29-2-2008

Sh. Sher Singh S/o Sh. Tape Ram R/o Vill. Nambliya, P.O. Kamand, Tehsil Sadar, District Mandi, H.P. . .*Petitioner.*

*Versus*

1. The Executive Engineer, HPPWD (B&R) Division No.1, Mandi, H.P.

2. Assistant Engineer H.P. PWD (B and R) Kamand Sub Division Kamand, Tehsil Sadar, District Mandi, H.P. . .*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Vijay Chandel, Adv
For the respondent : Sh. H.S. Dhiman, Dy.D.A.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

> "Whether the termination of services of Shri Sher Singh S/o Sh. Tape Ram, workman by the Executive Engineer, HPPWD, Division No. I, Mandi, H.P. *w.e.f.* 31-12-1999 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. That the workman/Claimant was appointed as Beldar on Daily wages, in the year Jan. 1993 at keeping Station, Sub-Division Kamand under Division Mandi, District Mandi, H.P. The said Station is directly under the Supervision and control of respondents, in the department of H.P.PWD.

2. That the workman/Claimant served with the respondent w.e.f. Jan. 1993 to Dec. 1999.

3. That the workman was discharging his duties with the best of his abilities and to the entire satisfaction of his superiors, the workman/claimant has successfully completed his period of more than 240 days in a given calendar years.

4. That all of a sudden in the month of Dec. 1999, the services of the workman/clamant were terminated orally without assigning any reason. That impugned oral order is arbitrary, malafide and issued in colorable exercise of power and in utter disregard and violation of rules, regulations standing orders, due process of law and was violative of articles 14 and 16 of the Constitution of India and against the Principle of natural justice.

5. That number of junior persons have been engaged and retained by the respondents. For example, Sh. Mohan Singh, Jethu Ram, Bhag Singh and Twarsu presently working as Beldar. The aforesaid persons are still working with the respondents.

6. That the workmnan/claimant is an unemployment youth and has the responsibility of the family to take care of and has no means of livelihood.

7. That the impugned oral order of termination is against the mandatory and statutory provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act.

8. That the respondents are estopped their own acts, deeds omission and conduct from issuing the impugned oral order. The respondent's department is bound to retain the workman/claimant and to regularized his services in accordance with law as the vacancy permanent nature and still existing.

9. That the workman/claimant had served the demand notice under section 2-A of the Industrial Disputes Act, upon the respondents. The copy of the said notice was also forwarded to the office of the Labour-cum-Conciliation Officer Mandi, Distt. Mandi, H.P. The respondents contested the claim of the workman and filed the detailed reply to the said notice. The Hon'ble Labour-cum-Conciliation Office after carefully going through the pleadings as well as the evidence led by the parties was pleased to held that the Industrial Disputes exists in the present facts and circumstances of the case and was pleased to refer the said Industrial dispute to the Hon'ble Court for adjudication.

10. That the workman/claimant craves leave of this Hon'ble Court to engage counsel as it is not possible for the applicant to personally attend to case. However, the Power of Attorney had already been fled on behalf of the workman/claimant.

**An affidavit is attached.**

It is, therefore, most respectfully prayed that the impugned oral order of termination be quashed and respondents be directed to reengaged the workman/claimant w.e.f. date of termination with full back wages and interest 12% and all other consequential benefits, (including seniority, regularization etc.)

Any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case, may kindly be granted in favour of the workman/claimant and justice be done."

The respondents contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondents to the claim petition are reproduced ad-verbatim hereinafter:—

**"PRELIMINARY SUBMISSIONS**

1. That the applicant has initially joined the work in the month of November, 1993 and worked for 28 days only in the year of 1993 i.e. for the month of 11/93 only. Thereafter he again joined the work in Jan. 1994 and worked intermittently for 251 days only in the calendar year of 1994 and worked for 90 days only in the calendar year of 1995, upto 3/95. Thereafter he remained absent from duty at his own convenience, accord & sweet will continuously for a period of 1 year & 10 Months. Thereafter he again joined the work in Feb., 1997 and worked intermittently up to 12/99. The applicant worked for 70 days only in the calendar year of 1997, for 59 days only in the calendar year of 1998, and for 204 days only in the calendar year of 1999. Since the applicant has

failed to put in continuous service with 240 or more working days after the year of 1994. Hence he has also not attained the status of continuous worker as per definition of section 25-B of the I.D. Act 1947. Accordingly the applicant was not entitled for retrenchment notice/compensation under section 25-F of I.D. Act 1947, upon completion of work/ paucity of funds against which no cause of action ever accrues to him. However, he will be given employment in accordance to his seniority with the department and as per the availability of work/funds. As such the present claim petition is not maintainable and may be dismissed with cost.

2. That the applicant has not completed 240 days or more working days in the last preceding 12 months period and remained willfully absent at his true will. Hence the applicant has not put up the continuous service as per provisions of section 25-B of the I.D. Act 1947. This view has been up held by the Hon'ble Court in case titled ESSENDDEINKI V/S Rajiv Kumar (2002) 8 SCC 400"

"Under section 25-B of the I.D. Act 1947 the requirement of statute of 240 days cannot be disputed and it is for the employee concerned to prove that he has infect completed 240 days in the last preceeding 12 months period."

The continuous service under the said Act has been defined in a case Mohan Lal V/S Management, Bhart Electronic Ltd. Reported in A.I.R. 1981 S.C. order 1253.

"A workman pleading that his retrenchment was not in a consonance with section 25-F, has Ist to show that he had been in continuous service for not less than 1 year as per the dictionary clause embedded in section 25-B, under the employer who has retrenched him."

It is further submitted that the present petitioner was engaged as a casual labour as per the availability of the seasonal works and funds available with the department. Hence the present petition cannot claim a benefits of section 25-Fof the I.D. Act 1947, in view of the ongoing seasonal works available during the period. Thus view have been held in a case Anil Bapu Rao Kanase v/s Krishana Sahakri Sakhar Karakhen Ltd. Reported in A.I.R. 1997 S.C. 2698. The petitioner has left the job on his own sweet will in Dec. 1999. The petitioner ha sfiled a case before the Hon'ble Admin. Tribunal which was decided on 27-2-02 for want of jurisdiction and the Ref. petition has been made on 21-4-03 which is beyond the period of limitation. The copy of judgment dated 27-2-02 of the Hon'ble Tribunal is Annexed as Annexure R-I. And the copy of reference petition has been annexed as Annexure R-2. It is further submitted that no dispute existed as the workman remained absent form the work with out leave or any communication to the department.

**ON MERITS:**

*Para No. 1.*—In reply to this para, it is submitted here that the applicant was initially engaged as daily waged Beldar during 11/93 and not from 1/93 as claimed by the application at Kamand Sub-Divn. HPPWD Kamand under Mandi Divn. No.I, HPPWD Mandi.

*Para No. 2* .—That the contents of this para are admitted to the extent that the applicant had worked intermittently with the department up to w.e.f.11/93 to 12/99. The details of working days are Annexed as Annexure R-3.

*Para No. 3.*—That the contents of this para are incorrect as such denied. It is submitted here that the applicant had worked for 28 days only in the calendar year of 1993, for 251 days in the calendar of 1994, for 90 days in the calendar year of 1995. The applicant did not worked for a single day during the calendar year of 1996. The applicant again joined the work in 2/97 and worked for 70 days only in the calendar year of 19997, for 59 days in the year of 1998 and for 204 days only in the calendar year of 1999. The detail of working days is annexed as Annexure R-3.

As per Ann. R-3 the applicant had worked 240 or more working days only in the year of 1994. Due to this facts the applicant had lost his seniority with department after the year of 1994.

*Para No. 4.*—That the contents of this para are incorrect as such denied. It is submitted here that the services of the applicant was never terminated by the respondent/department. But the applicant had given employment as per availability of work/funds. This being so because the applicant has not completed the legal requirement of section 25-B of I.D. Act 1947 by not working for 240 or more working days continuously after the year of 1994 to till the year of 1999. Hence the claimant is not entitled for prior retrenchment notice in 1/2000. The detailed reply to this para has been given in para 1 &2 of the preliminary submissions.

*Para No. 5.*—That the contents of this para are incorrect as such denied. It is submitted here that has per detail of working days attached as per Annexure R-4 to R-7. It is submitted that Sh. Bhag Singh was engaged during 10/93, Sh. Mohan Singh was engaged during 10/93, Sh. Jethu was engaged during 1/94 and Sh. Twarsu was engaged during 5/95. All the alleged persons had completed 240 or more working days in the calendar year of 1999 and all in continuous in service. As such the allegation of the applicant that junior person were retained are baseless and incorrect.

*Para No. 6.*—Needs no reply.

*Para No. 7.*—In reply to this para as per submission made supra, the services of the applicant were never terminated by the respondent/department but he left the job at his own sweet will. It is clear from detail of working days Annexed as Annexure R-3 that the applicant had worked/completed 251 days during the year of 1994. Thereafter the applicant has not completed /worked for 240 or more working days in any of the calendar year/nor in 12 preceding months. Hence the violation of I.D. Act, 1947 does not arise. Hence there is no requirement to serve any retrenchment notice. The department has never terminated the services of the applicant.

*Para No.8.*—As per submissions made in various paras supra, it is submitted here that as per the policy of the Govt. Respondents/Executive Engineer/Assistant Engineer are not the competent authority to engage any new person without the approval of the Govt.. It is further submitted that the department has note adequate funds and work available as per norms fixed by the Govt.

*Para No. 9.*—That the contents of this para are admitted to the extent that the Ref. Claim petition has been field by the applicant/claimant on 21.4.03 and the respondent have contested the claim of the applicant claimant of the grounds as are already given in the paras supra. It is submitted that Ref. claim petition is barred by limitation as the claimant has left the job on his own will.

*Para No. 10.*—That the contents of this para are legal as such needs no reply.

It is therefore respectfully prayed that the claim petition devoid any merits deserved dismissal, may kindly be dismissed in the interest of justice."

The claimant contested the Reply of the respondents and filed a rejoinder. The contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced adverbatim hereinafter:—

**"PRELIMINARY SUBMISSIONS**

1. The averments made in the Preliminary submissions by the respondent are not admitted. It is submitted that the claim of the petition is maintainable. As laid down by the Apex Court in the

case of Ajaib Singh Vs. Sirhind Co-Operative Marketing Cum-Process Service Society Ltd. & another (1996) 6-SCC-82, If the order of the dismissal is challenged belatedly, the dispute would still continue for adjudication. As such the question of limitation and the Ruling of Hon'ble Court as mentioned in the reply is not applicable. It is denied that the petitioner has left the job at his own.

**ON MERITS:**

1. The averments made in the para of reply is a matter of record.
2. Averments made in the para of reply are admitted to the extent that the petitioner has worked in the year, 1993 to 1999 and his services have been illegally terminated *w.e.f.* Dec. 1999.
3. Contents of Para No. 3 of the reply are wrong and not admitted.
4. Contents of para No. 4 of the reply are also wrong and not admitted.
5. Contents of para No. 5 of the reply are wrong and not admitted. The petitioner has never left the job at his own volition. Rather the respondent has terminated the service of the petitioner orally without complying the principles of natural justice and provisions of Industrial Disputes Act, 1947 and the right to live of the petitioner has been snatched by the respondent as guaranteed in Article 21 of the Constitution of India. The petitioner was engaged in November 1993 and the junior persons have been engaged thereafter (Sh. Jethu Ram, Twaru Ram).

6-7-8. Contents of Paras No. 6, 7 & 8 of the reply are wrong and not admitted.

9. Para No. 9 of the reply needs no rejoinder.
10. Para No. 10 also needs no rejoinder.

Prayer para is also wrong and not admitted. In view of the position stated in the petition and above rejoinder, the claim petition may kindly be allowed and justice be done, for which the petitioner shall ever pray."

**On the pleadings of the parties, this Tribunal framed the following issues:**

1. Whether the service of the petitioner was terminated by the respondent *w.e.f.* 31-12-1999 without complying the provisions of Industrial Dispute Act, in an illegal and improper manner as alleged. OPP

2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? OPP

3. Whether the services of the petitioner were terminated due to completion of work and paucity of funds as alleged? OPR

4. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

Issue No. 1 Yes
Issue No. 2 As per operative part of the Award

Issue No. 3 No

Issue No. 4 Relief as per operative part.

**REASONS FOR FINDINGS**

**Issues No. 1 and 2**

Since both these issues are interlinked, hence, taken up together for determination. In proof of the factum of the claimant having rendered work has depended upon the sole testimony of PW1. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter, the breaks, in, the continuity of service are ascribable to any reason being then owing to any fault on the part of workman. Since perusal of Ex. RX which is the mandays chart with respect to the work performed by the claimant under the respondent and which having such been prepared during the discharge of official duties by a public servant they enjoy a presumption of truth which presumption has not been rebutted hence, its contents assume conclusiveness as and with their being no evidence to rebut the same having been adduced, conveying, that the claimant did render "continuous service" in the manner enjoined by law, inasmuch, as he rendered work with condonable legal breaks under the respondent, hence, then, when with their being even breaks in the continuity of his service under the respondent in each of the 12 calendar months preceding his disengagement and when the said breaks or interruptions in service has not been shown by satisfactory evidence to be on account of cessation of work or on account of illness or sickness of the claimant, hence, condonable otherwise also being wholly on account of such breaks in service being occasioned by non availability of work, obviously, when the breaks have been when proved to be not intentionally administered also when there is no conclusive evidence to believe the view of the respondent that he was engaged against works purely casual nature existed in period of time, while intermittently ceasing the engagement of the claimant on such cessor of works hence, the intermittent cessor in the engagement of the claimant under the respondent is to be imputed to his abstention from work and not to only intentionally administered fictional illegal breaks. Consequently, when there is abysmal failure on the part of the claimant to demonstrate the he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Ex. RX achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with its demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

**25F**. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(hh) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(ii) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(jj) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B)**. Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.—

(w) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(xxiii) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(xxiv) two hundred and forty days, in any other case;

(x) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

(xxiii) ninety-five days, in the case of workman employed below ground in a mine; and

(xxiv) one hundred and twenty days, in any other case.

*Explanation.*-—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(xxxiv) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;

(xxxv) he has been on leave with full wages, earned in the previous years;

(xxxvi) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

It is further contended on behalf of the petitioner with the infraction of the principle of ‘Last Come First Go’ inasmuch, as, two persons namely Jethu Ram and Twarsu Ram came to be retained in service by the respondent at the time contemporaneous to the disengagement from service of the claimant by the respondent, the claimant has depended upon the admission in the cross-examination of RW1, on a perusal of whose testimony it emerges that the aforesaid persons namely Jethu Ram and Twarsu Ram are juniors to the claimant, the, said fact is corroborated by the mandays chart qua them respectively bearing Annexures R-6 and R-7 which disclose that the aforesaid juniors persons were engaged subsequent to the engagement in service of the claimant, therefore, the claimant was senior to them, hence, the services of the claimant could not have been dispensed with, unless the services of aforesaid persons namely Jethu Ram and Twarsu Ram engaged later were dispensed with earlier than, the dispensing, with, by the respondent, of, the services of the claimant, so as to bring about the compliance, by, it with the principle of ‘Last Come First Go’. However, the

retention of juniors to the claimant violate the principle of 'Last Come First Go', as such, invalidates the disengagement from service of the claimant. Issues decided accordingly.

*Issue No. 3*

Even if there is an admission qua the fact that the claimant was engaged for a specific period of time of whose elapse his services came to an automatic end, thereby, in the light of the provision of section (2)(oo)(bb) whose provisions are extracted hereinafter and which mandate that when on the expiry of the period of contract under which the workman was engaged by the employer such cessation in service would not constitute "retrenchment", hence, rendering unnecessary the application of the provisions of the Industrial Disputes Act, 1947 which regulate only the manner of "retrenchment" of the services by the employer of a workman. Obviously when such cessation in service is begotten on an expiry of terms of an express contract or under an implied contract under which the workman was engaged by the employer, such, cessation hence, being not "retrenchment" would be beyond the purview of the provisions of Industrial Disputes Act, thereby, relieving the employer of any duty to abide with its provision for legalizing the disengagement of the service of the workman under him. Obviously when the respondent in proof of the issue was under a legal obligation to adduce cogent and satisfactory evidence that under an either express contract or an implied contract under which the claimant was engaged in service and on the, expiry of the tenure of the service prescribed in it there was cessation in service of the claimant under the employer so as to, to treat such cessation to be then to be construable to be falling within the ambit of section 2(oo) (bb) thereby relieving the employer to abide with the provision the Industrial Disputes Act. However, for non adduction of satisfactory cogent evidence by the employer on whom an onus of proving the said issue was cast, renders the issue not proved. Consequently it is to be construed that when the engagement from service of the claimant under the respondent was neither under the term of a an express contract nor implied contract then accordingly a duty was cast upon the employer under the Industrial Disputes Act, to, comply with their provisions when having not come to be complied with renders to the disengagement from service of the claimant untenable. Issue decided accordingly.

"Section 2 (oo) (bb) of the Industrial Disputes Act

(oo). "retrenchment" means the termination by the employer of the service of workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

(a) voluntary retirement of the workman; or
(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the nonrenewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

**Relief**

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced : 29-02-2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court-cum-Industrial*
*Tribunal, Dharamshala.*

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**BEFORE SHRI SURESHWAR THAKUR, PRESIDING JUDGE, H.P. INDUSTRIAL TRIBUNAL-**CUM-**LABOUR COURT, DHARAMSHALA, DISTT . KANGRA H.P. (CAMP AT MANDI)**

Reference : No. 35/2005
Presented on : 6-3-2005
Decided on : 29-2-2008

Sh. Gagan Bihar S/o Shri Jiwa Nand, vill. Garnal, P.O. Majher, Tehsil, Chachiot, Distt. Mandi, H.P. . .*Petitioner.*

*Versus*

1. The Executive Engineer, H.P.P.W.D. Division No.1, Kullu, District Kullu, H.P.
2. State of H.P. through Secretary PWD Shimla, H.P. . .*Respondents.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Sh. Bimal Sharma, Adv.

For the respondent : Sh. H. S. Dhiman, Dy. D.A. along with Sh. Virender Kumar, JE/AR.

AWARD

The hereinafter extracted reference has been received for adjudication before this Tribunal from the competent authority:

"Whether the termination of services of Sh. Gagan Bihar S/o Shri Jiwa Nand, Ex. daily wages chowkidar by the Executive Engineer, H.P.P.W.D. Division No.1, Kullu, H.P. *w.e.f.* 16.1.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits Shri Gagan Bihar is entitled to?"

In pursuance to the receipt of the hereinabove extracted reference, the claimant instituted a statement of claim before this Tribunal, the contents of claim petition are extracted adverbatim.

"1. That the applicant was engaged as Chowkidar by the Executive Engineer H.P.P.W.D. Kullu Div. No.1 in Sub-Division Banjar on and *w.e.f.* 01-02-96 and was continued upto 15-1-2000, when his services were terminated illegally without any notice to this effect as laid down in Section 25-F of the Industrial Disputes Act, though the applicant had completed 240 days of service in proceeding 12 months and therefore the termination of the applicant is illegal, arbitrary and against the principles of natural justice.

2. That the applicant had raised Industrial Disputes before the Labour Officer- *cum*-Conciliation Officer Mandi where due to the indifferent attitude of the respondent the matter could not be settled.

3. That permanent work was and is still available with the department and there was no bonafide reason to terminate the services of the applicant but the department has terminated the services of the applicant illegally in order to defeat his right of regularization and seniority etc, therefore the termination of the applicant is not in good faith and is out of extraneous reasons and is malafidy.

4. That many juniors of the applicant have been retained while terminating services of the applicant and therefore there is violation of Section 25-G of the Industrial Disputes Act, 1947.

5. That the department has engaged many new persons after the termination of the applicant without giving any offer to the applicant to join being a senior therefore, there is violation of Section 25-H of the Industrial Disputes Act.

6. That as the termination is illegal, therefore the applicant is entitled to be reengaged with all consequential relief/benefits.

7. That the applicant had filed an O.A. vide No.305/2000, but the same was rejected for want of jurisdiction.

It is, therefore, prayed that the reference petition may be allowed with all consequential benefits and justice be done."

The respondent contested the claim petition and filed a detailed reply. The contents of reply as furnished by the respondent to the claim petition are reproduced ad-verbatim hereinafter:—

"*Para-1.*—That the contents of this para are admitted to the extent that the applicant was engaged as daily wages Chowkidar on 1.2.1996 and remained working as such up till 15.1.2000. The rest of the contents of this Para are wrong hence denied to the extent that the applicant has not completed 240 days service in the Year 1998. He has worked for only 237 days service in the year 1998. He has completed 240 days continuous service only in the year 1996 and 1997, but he has not completed 240 days in the year 1998. Hence he has lost his seniority in the year 1998. List of the working days are hereby enclosed as annexure R-I. After 1999, he was engaged only for few days as per availability of funds.

*Para-2.*—That the contents of this Para are legal in Nature, hence no comments.

*Para-3.*—That the applicant has not completed 240 days in calendar year 1998-1999 and for the financial year 1999-2000 and budget was not sufficient for continues of causal daily rated workers for whole of the year, therefore, service have been terminated w.e.f. 15.1.2000 due to non availability of funds. The applicant has not completed 240 days in calendar year 1998 and 1999 thus upon non availability of funds has rightly been disengaged orally against which no cause of action ever accrues to him. The services of the applicant have not been terminated in malafide manner.

*Para-4.*—That the contents of this Para are wrong hence denied to the extent that no junior persons to the applicant have been retained after the termination of the applicant, therefore the applicant has failed to avail the remedies available to him under Industrial Dispute Act, 1947.

*Para-5*.—That the contents of this Para are wrong hence denied to the extent that no persons after the termination of the applicant as stated by the applicant have been engaged. Hence the violation of section 25H of the Industrial Dispute does not arise.

*Para-6*.—That the contents of this sub Para are wrong hence denied, as the service of the applicant have not been terminated in malafide manner.

*Para-7*.—That the Respondent had filed the reply of the above O.A. in the Hon'ble Administrative Tribunal, but in the meantime the case has been transferred to Hon'ble Industrial Tribunal-Labour Court, Dharamshala for want of jurisdiction.

It is, therefore, respectfully prayed that in view the submissions made above the application is devoid of any merit and required to be dismissed with cost of in the interest of justice."

The claimant contested the Reply of the respondents and filed a rejoinder. The contents of rejoinder as furnished by the claimant to the reply of the respondents are reproduced adverbatim hereinafter:—

"1. The contents of para No.1 of the claim are reasserted to be correct and that of reply are wrong, incorrect, hence denied. It is denied that the applicant has not completed 240 days in the year 1998. It is also denied that the applicant has lost his seniority in the year 1998 and the applicant was engaged only for few days as per availability of funds seniority list is attached.

2. Para No.2 of the reply needs no rejoinder.

3. Para No.3 of the claim is reasserted be correct and that of the reply is wrong, incorrect, hence denied. It is further submitted that on one hand the respondents are alleging that their was no budget for continuing the applicant and on the other hand they are alleging that he has not completed 240 days.

4. Para No.4 of the claim is reasserted and that of reply is wrong, incorrect, hence denied. It is submitted that juniors have been retained.

5. Para No.5 of the claim is reasserted and that of reply is wrong, incorrect, hence denied.

6. Para No.6 of the claim is reasserted to be correct and that of reply is wrong, incorrect hence denied.

7. Para No.—7 of the reply is admitted.

Prayer para of the reply is wrong, incorrect, hence denied.

It is, therefore, prayed that keeping in view the submissions made above, the reference petition may be allowed and justice be done."

On the pleadings of the parties, this Tribunal framed the following issues:

7. Whether the disengagement from the service of the claimant by the respondent is in accordance with law? OPP

8. If the above issue is proved in the affirmative to what relief of service benefits the petitioner is entitled? OPP

9. Relief.

For the reasons to be recorded hereinafter while discussing the issues for determination, my findings on the aforesaid issues are as under:

| | |
|---|---|
| Issue No. 1 | No |
| Issue No. 2 | As per operative part |
| Issue No. 3 | Relief as per operative part. |

REASONS FOR FINDINGS

*Issues No. 1 and 2*

Since both these issues are interlinked, hence, taken up together for determination.
In proof of averments and assertions made in the claim petition by the claimant the claimant stepped into the witness box and has supported his assertions made in the claim petition and has during the course of his examination-in-chief tendered into evidence his affidavit bearing Ex. PW1/A. However, the uncorroborated testimony of the claimant is insufficient to convince this Tribunal, that the claimant had rendered the necessary period of qualifying service under the respondent for his being entitled to seek the benefits of the provisions of section 25-F of the Industrial Disputes Act whose provisions are extracted hereinafter. On a perusal of the hereinafter extracted provisions of section 25-F of the Industrial Disputes Act it is apparent that it is enjoined upon the claimant, that, he render 240 days continuous service in the 12 calendar months preceding his disengagement which period of service has to be rendered in continuity, unless, for lawful reasons as detailed in the provisions of section 25-B of the Industrial Disputes Act whose provisions define "continue service" which provisions are also, extracted hereinafter. Consequently, when there is abysmal failure on the part of the claimant to demonstrate that he had rendered 240 days of continuous service under the respondent in the 12 calendar months his disengagement, rather, for the reasons ascribed, hereinabove upon Annexure-RI achieving conclusiveness for lack of evidence in rebuttal having come to be adduced by the petitioner, consequently, with its demonstrating lack of fulfillment of the criteria stipulated in the provisions of section 25-F of the Industrial Disputes Act for the claimant to enjoy its benefits, accordingly, the retrenchment of the services of the claimant even by a verbal order and without any notice does not infringe any of the rights of the claimant.

**25F.** Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(kk) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(ll) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(mm) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

**25 (B).** Definition of continuous service.- For the purposes of this Chapter,-

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or

authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman;
(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(y) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(xxv) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(xxvi) two hundred and forty days, in any other case;

(z) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.—

(xxv) ninety-five days, in the case of workman employed below ground in a mine; and
(xxvi) one hundred and twenty days, in any other case.

*Explanation.*—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(xxxvii) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
(xxxviii) been on leave with full wages, earned in the previous years;
(xxxix) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

The claimant has ascribed the infraction of the principle of 'Last Come First Go' by the respondent to support that he has relied upon the seniority list bearing Ex. RW1/A displaying the fact of the claimant having been engaged in February, 1996 and the certain persons namely Bhagi Devi, Hem Raj, Reema Devi, Nimo Devi, Dhani Ram, Govind Ram, Shyam Chand, Balo Ram, Indru, Kishan. though initially engaged subsequently to the engagement of the claimant, hence, juniors to the claimant. However, since it is reflected in the seniority list that the claimant was disengaged from service in the year 2000, though the juniors to the claimant as reflected in Ex. RW1/A are continuing in employment under the respondent, therefore, the infraction of the principle of 'Last Come First Go' by the respondent is brought about which renders the disengagement from service of the claimant by the respondent to be illegal. Issues accordingly decided.

**Relief**

Claim petition allowed. The respondent is directed to reengage the claimant in the same capacity in which he was rendering work for then prior to his disengagement so also, at the same place or in its vicinity. Besides, the break in service shall not affect the seniority of the claimant. However, in light of the fact that no evidence has been adduced on record to demonstrate that the claimant was or was not gainfully employed during the period of his disengagement, hence, relief of back wages is denied. Reference answered accordingly.

Let a copy of this award be sent to the appropriate government for publication in the official gazette. The file after completion be consigned to the record room.

Announced : 29-2-2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal, Dharamshala.*

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**IN THE COURT OF SHRI SURESHWAR THAKUR, PRESIDING JUDGE, LABOUR COURT-**CUM-**INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P. (CAMP AT MANDI)**

Reference : No 81/06
Presented on :
Decided on : 29-2-2008

Smt. Kala Devi D/o Sh. Mansa Ram, Village Nalwa, P.O. Jassal, Tehsil Karsog, Distt. Mandi, H.P. ..*Petitioner.*

*Versus*

The Divisional Forest Officer, Forest Division, Karsog, Distt. Mandi. H.P.
. .*Respondent.*

*Reference under section 10 of the Industrial Disputes Act, 1947.*

For the petitioner : Petitioner in person

For the respondent : Sh. H.S. Dhiman, Dy. D.A.

ORDER

The hereinafter extracted reference has been received for adjudication from the competent authority.

"Whether the termination of services of Smt. Kala Devi D/o Sh. Mansa Ram workman by the Divisional Forest Officer, Forest Division, Karsog, Distt. Mandi, H.P. w.e.f. 11.12.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

29-2-2008 Present : Petitioner in person

Sh. H. S. Dhiman, Ld. Dy.D.A. for the respondent

A statement has made by the petitioner which is duly reduced into writing and signed by her in which she has disclosed that she does not want to pursue and to continue the case. In light thereof the instant petition is dismissed as being withdrawn. The Reference answered accordingly. The file after due completion be consigned to the record room.

Announced : 29-2-2008

SURESHWAR THAKUR,
*Presiding Judge,*
*Labour Court*-cum-*Industrial Tribunal, Dharamshala.*

ब अदालत श्री बिनय सिंह (हि0प्र0से0), उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0 प्र0)

श्रीमती खतीजा पत्नी श्री हमीद खान, निवासी मकान नम्बर 15 ए0, उप–महाल रौड़ा, सैक्टर नम्बर 3, तहसील सदर, जिला बिलासपुर (हि0 प्र0)।

बनाम

आम जनता

प्रार्थना–पत्र बराए दरुस्ती बारे।

श्रीमती खतीजा पत्नी श्री हमीद खान, निवासी मकान नम्बर 15 ए0, उप–महाल रौड़ा, तहसील सदर, जिला बिलासपुर ने इस न्यायालय में ब्यान हल्फी सहित प्रार्थना–पत्र दिया है कि उसका नाम नगर पालिका अभिलेख में कानिल गलत दर्ज है। जबकि उसका सही नाम खतीजा है। आवेदिका अपना सही नाम नगर पालिका रिकार्ड में दर्ज करवाना चाहती है।

अतः आम जनता व सम्बन्धित रिश्तेदारों को इस अदालती इश्तहार द्वारा सूचित किया जाता है कि अगर उपरोक्त बारे किसी को एतराज हो तो वह दिनांक 6–12–2008 को प्रातः 10.00 बजे या इससे पहले अपने उजर या एतराज अधोहस्ताक्षरी के न्यायालय में असालतन या वकालतन पेश कर सकते हैं। मियाद गुजरने के बाद कोई भी उजर या एतराज काबिले समायत न होगा।

आज दिनांक 10–11–2008 को मेरे हस्ताक्षर व मोहर न्यायालय से जारी हुआ।

मोहर।

बिनय सिंह,
उप–मण्डल दण्डाधिकारी सदर,
जिला बिलासपुर (हि0 प्र0)।

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ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0 प्र0)

श्री Subhash पुत्र श्री Nikka Ram, निवासी 8-D. Diara Sector, तहसील सदर, जिला बिलासपुर (हि0 प्र0) . . प्रार्थी।

बनाम

सचिव E. O. M. C. Bilaspur, तहसील सदर, जिला बिलासपुर (हि0 प्र0)।

नोटिस बनाम आम जनता।

श्री Subhash पुत्र श्री Nikka Ram, निवासी 8-D, Diara Sector, तहसील सदर, जिला बिलासपुर (हि0 प्र0) ने इस न्यायालय में एक आवेदन–पत्र अधीन धारा 13 (3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत दायर किया है जिसमें उसने अनुरोध किया है कि उसकी लड़की की जन्म तिथि नगर पालिका अभिलेख में दर्ज नहीं है जिसे अब दर्ज किया जाये।

| क्र0 सं0 | लड़की का नाम | जन्म तिथि |
|---|---|---|
| 1 | रजनी | 11–6–2004 |

अतः सर्वसाधारण जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित बच्चे की जन्म तिथि को नगर पालिका में दर्ज करने में कोई आपत्ति हो तो वह दिनांक 6–12–2008 को सुबह 10.00 बजे न्यायालय में स्वयं उपस्थित होकर प्रस्तुत कर सकता है। यदि उक्त जन्म तिथि दर्ज करने के बारे में काई आपत्ति प्राप्त न हुई तो यह समझा जाएगा कि उक्त व्यक्ति की जन्म तिथि बारे किसी को एतराज न है तथा इन्से नगर पालिका अभिलेख में दर्ज करने बारे आगामी आदेश पारित कर दिये जायेंगे।

आज दिनांक 10–11–2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी सदर,
जिला बिलासपुर (हि0 प्र0)।

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ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0 प्र0)

श्री प्रकाश चन्द पुत्र श्री राम लाल, निवासी ननावां, तहसील घुमारवीं, जिला बिलासपुर (हि0 प्र0)
. . प्रार्थी।

बनाम

सचिव ग्राम पंचायत कन्रौर, तहसील सदर, जिला बिलासपुर (हि0 प्र0)।

नोटिस बनाम आम जनता।

श्री प्रकाश चन्द पुत्र श्री राम लाल, निवासी ननावां, तहसील घुमारवीं, जिला बिलासपुर (हि0 प्र0) ने इस न्यायालय में एक आवेदन–पत्र अधीन धारा 13 (3) जन्म एवं मृत्यु अधिनियम, 1969 के अन्तर्गत दायर किया है, जिसमें उसने अनुरोध किया है कि उसके ददेरा की मृत्यु ग्राम पंचायत अभिलेख में दर्ज नहीं है जिसे अब दर्ज किया जायेगा।

| क्र0 सं0 | ददेरा का नाम | मृत्यु तिथि |
|---|---|---|
| 1 | प्रभी देवी | |

अतः सर्वसाधारण जनता को सूचित किया जाता है कि यदि उपरोक्त वर्णित मृत्यु तिथि को ग्राम पंचायत अभिलेख में दर्ज करने में कोई आपत्ति हो तो वह दिनांक 6–12–2008 को सुबह 10.00 बजे न्यायालय में उपस्थित होकर प्रस्तुत कर सकता है। यदि उक्त मृत्यु तिथि के बारे में काई आपत्ति प्राप्त न हुई तो यह समझा जाएगा कि उक्त व्यक्ति की मृत्यु तिथि बारे किसी को एतराज न है तथा इन्से ग्राम पंचायत अभिलेख में दर्ज करने बारे आगामी आदेश पारित कर दिये जायेंगे।

आज दिनांक 10–11–2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी किया गया।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी सदर,
जिला बिलासपुर (हि0 प्र0)।

ब अदालत उप–मण्डल दण्डाधिकारी सदर, जिला बिलासपुर (हि0 प्र0)

Shri Nand Lal s/o Shri Devi Ram, r/o Khalota, P. O. Namhol, Tehsil Sadar, District Bilaspur, Vaneel Kumari d/o Jagdish alota, r/o P. O. Naswali] Tehsil Ghumarawin, District Bilaspur, at Present w/o Shri Nand Lal, r/o Khalota, Tehsil Sadar, District Bilaspur (H. P).

बनाम

आम जनता

दरख्वास्त बराए पंचायत अभिलेख नम्होल में शादी दर्ज करने बारा।

इस न्यायालय में प्रार्थना–पत्र मय शपथ–पत्र पेश किया है कि शादी दिनांक 26–4–2008 को मुताबिक हिन्दु रीति–रिवाज के श्री नन्द लाल पुत्र श्री देवी राम, निवासी खलोटा, डाकघर नम्होल की शादी वनीता पुत्री श्री जगदीश के साथ हुई है और तब से बतौर पति–पत्नी आपस में रह रहे हैं। परन्तु गलती से शादी का इन्द्राज पंचायत अभिलेख नम्होल में दर्ज नहीं करवाया है।

अतः आम जनता को इश्तहार द्वारा सूचित किया जाता है कि यदि किसी भी व्यक्ति को शादी दर्ज करने बारा कोई उजर व एतराज हो तो वह दिनांक 5–12–2008 को 10.00 बजे या इससे पूर्व असालतन व वकालतन हाजिर अदालत होकर पेश करें अन्यथा सचिव को शादी दर्ज करने का आदेश जारी कर दिया जाएगा।

मोहर। हस्ताक्षरित / –
उप–मण्डल दण्डाधिकारी सदर,
जिला बिलासपुर (हि0 प्र0)।

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ब अदालत सहायक समाहर्ता, द्वितीय श्रेणी हरोली, जिला ऊना (हि0 प्र0)

ब मुकद्दमा :

श्री सगली राम पुत्र श्री अच्छर राम, गांव व डाकघर दुलैहड, तहसील हरोली, जिला ऊना (हि0 प्र0) . . प्रार्थी।

बनाम

आम जनता

प्रार्थना–पत्र बराये नाम दरुस्ती खेवट नम्बर 269, 271 नकल जमाबन्दी साल 1997–98 मुहाल व मौजा दुलैहड, तहसील हरोली, जिला ऊना (हि0 प्र0)।

प्रार्थी श्री सगली राम पुत्र श्री अच्छर राम, निवासी दुलैहड, जिला ऊना ने अधोहस्ताक्षरी के न्यायालय में प्रार्थना–पत्र एवं शपथ–पत्र इस आशय पर पेश किया है कि उसका नाम ग्राम पंचायत दुलैहड के परिवार रजिस्टर में सगली राम दर्ज है, जबकि राजस्व अभिलेख मुहाल व मौजा दुलैहड में उसका नाम रंगीला राम दर्ज है। अब उस का नाम राजस्व अभिलेख मुहाल व मौजा दुलैहड में रंगीला राम के स्थान पर श्री रंगीला राम उर्फ सगली राम दर्ज करने के आदेश दिये जावें।

अतः इस इश्तहार के माध्यम से आम जनता को सूचित किया जाता है कि नाम दरुस्ती बारा आम जनता को कोई एतराज हो तो वह दिनांक 10–12–2008 को प्रातः 10.00 बजे असालतन या वकालतन हाजिर

आकर अपना एतराज पेश कर सकता है। हाजिर न आने की सूरत में एक तरफा कार्यवाही अमल में लाई जाकर दरुस्ती कर दी जायेगी।

आज दिनांक 16–9–2008 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ ।

मोहर। हस्ताक्षरित / –
सहायक समाहर्ता, द्वितीय श्रेणी हरोली,
जिला ऊना (हि0 प्र0)।

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**HIMACHAL PRADESH STATE AGRICULTURAL MARKETING BOARD**
**VIPNAN BHAWAN, KHALINI, SHIMLA-171002**

NOTIFICATION

*Shimla-2, the 28 November 2008*

**No.HMB(B)2-18/96(V)-8845-58.—** In exercise of the powers conferred by Section 85(C) of the Himachal Pradesh State Agricultural and Horticultural Marketing Produce (Development and Regulation)Act, 2005 (Act No.20 of 2005), the H.P.State Agricultural Marketing Board with the prior approval of the State government obtained vide letter No.Agr.A(3)-2/2008 dated 28-4-2008 followed by the resolution No.5 passed by the Board of Members in its meeting held on 22-5-2008, is hereby pleased to notify second amendment in the "H.P. State Agricultural Marketing Board (Recruitment and conditions of Service of Officers and Staff)Regulations,2006" by framing and notifying the Recruitment and Promotion Rules for the post of Computer Data Operator, as per annexure-A attached to this notification, namely:-

**1. Short title and Commencement.—**(i) These Regulations may be called as "H.P.State Agricultural Marketing Board (Recruitment and Condition of Service of Officers and Staff)(IInd Amendment)Regulations,2008"

**2.** These rules shall come into force from the date of Publication in the Rajpatra, Himachal Pradesh.

(i) **Second Amendment.—** (Classification of posts and appointments) below regulation-8 "Qualification & mode of recruitment for the post of Computer Data Operator, Grade-C are specified and included in Schedule-II of aforesaid Regulations" shall be added after the R&P Rules of Divisional Accountant, Grade-B

*Managing Director-cum-*
*Member Secretary.*

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ANNEXURE-A

RECRUITMENT AND PROMOTION RULES FOR THE POST OF COMPUTER DATA OPERATOR IN THE H.P. STATE AGRICULTURAL MARKETING BOARD, KHALINI, SHIMLA-2

**1. Name of the post.—** Computer Data Operator

**2. Number of posts.**— 5 No.

**3. Classification.—** Class-III (Non-Gazetted) Grade-C

**4. Scale of pay.—** Rs. 5000-160-5800-200-7000-220-8100.
(Be given in expanded notation).

**5. Whether Selection post Non-Selection.—** Non-selection post.

**6. Age. For direct recruitment.—** Between 18 to 45 years.

Provided that the upper age limit for direct recruits will not be applicable to the candidates already in service of the Govt. including those who have been appointed on adhoc or on contract basis.

Provided further that if a candidate appointed on adhoc basis had become overage on the date when he was appointed as such he shall not be eligible for any relaxation in the prescribed age limit by virtue of his such adhoc or contract appointment.

Provided further that upper age limit is relaxable for scheduled castes/Scheduled Tribes/ Other categories of persons to the extent permissible under the general or special order(s) of the Himachal Pradesh Government.

Provided further that the employees of all the public sector corporations and autonomous bodies who happened to be Government servants before absorption in Public Sector Corporation/ Autonomous Bodies at the time of initial constitutions of such corporations/Autonomous Bodies shall be allowed age concession in direct recruitment as admissible to Government servants. This concession will not, however, be admissible to such staff of the Public Sector Corporations/Autonomous Bodies who were/ are subsequently appointed by such Corporation/ Autonomous Bodies and who are/were finally absorbed in the service of such Corporation/Autonomous Bodies after initial constitution of the Public sector Corporations/ Autonomous Bodies.

1. Age limit for direct recruitment will be reckoned on the first day of the year in which the post(s) is/are advertised for inviting application or notified to the Employment Exchange or as the case may be.

2. Age and experience in the case of direct recruitment relaxable at the discretion of the H.P. Govt. in case the candidate is otherwise well qualified.

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| 7. | Minimum Educational and other qualification required for direct recruits. | (a) Essential Qualification.<br><br>Should possess a Bachelor Degree in Computer Application from a recognized University/Institution.<br>OR<br>(i) Bachelor's Degree or its equivalent from a recognized University.<br>(ii) Diploma for atleast one year duration in Data Entry Operation/Computer application/Computer Programming or its equivalent from a recognized University or from an Institution duly recognized by the Central/Himachal Pradesh Government. |

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| | | (b) Desirable Qualification.<br>Knowledge of customs, manners and dialects of Himachal Pradesh and suitability for appointment in the peculiar conditions prevailing in the Pradesh. |
| 8. | Whether age and educational qualifications prescribed for direct recruits will apply in the case of the promotees. | Age : Not applicable<br>Educational Qualifications : Not applicable. |
| 9. | Period of probation, if any. | Two years subject to such further extension for a period not exceeding one year as may be order by the competent authority in special circumstances and reasons to be recorded in writing. |
| 10. | Method of recruitment whether by direct recruitment or by promotion/deputation, transfer and the percentage of vacancies to be filled in by various methods. | 100% by direct recruitment or on contract basis failing which by deputation/ transfer amongst from the incumbents, holding analogous post in the identical scale in the Govt. Department/Public Sector under taking/Autonomous bodies. |
| 11. | In case of recruitment by promotion, deputation, transfer, grades from which promotion/ deputation/ transfer is to be made | In case of deputation/transfer, the incumbent should be holding analogous post in the identical pay scale in Govt./Public undertaking/Autonomous bodies. |
| 12. | If a Departmental Promotion Committee exists, what is its composition: | As may be constituted by the competent authority from time to time. |
| 13. | Circumstances under which the H.P.P.S.C. is to be consulted in making recruitment: | Not applicable. |
| 14. | Essential requirement for a direct recruitment. | A candidate for appointment to any service or post must be a Citizen of India. |
| 15. | Selection for appointment to post by direct recruitment. | Selection for appointment to the post in the case of direct rectt. Shall be made on the basis of viva voce test if the H.P. Marketing Board or other recruiting authority, as the case may be, so consider necessary or expedient by a written test or practical test, the standard/ syllabus, etc. of which, will be determined by the Board/ other recruiting authority as the case may be. |

**15-A**

*Selection for appointment to the post by contract appointment;*

**(I) CONCEPT:.—** a. Under this policy Computer Data Operator in the H.P. State Agricultural Marketing Board will be engaged on contract basis initially for one year which may be extendable for two more years on year to year basis.

b. The candidates will be selected by advertising the vacant post by the Recruitment Committee constituted by the Board from time to time.

c. The selection will be made in accordance with the eligibility conditions prescribed in these Rules;

d. Contract appointee so selected under these Rules will not have any right to claim regularization OR permanent absorption in Board/ Market Committees.

**(II) EMOLUMENT PAYABLE.—** The Computer Data Operator appointed on contract basis will be paid consolidated amount i.e. (Rs. ) per month. An amount of Rs. As annual increase in consolidated contractual amount for 2nd and 3rd years respectively will be allowed if contract is extended beyond one year.

**(III) APPOINTING/DISCIPLINARY AUTHORITY.—** Head of the Department will be the appointing & disciplinary authority.

**(IV) SELECTION PROCESS.—** The candidates will be selected by the Recruitment Committee comprising of at least 3 officers including professional/technical experts duly constituted by the Board.

**(V) COMMITTEE FOR SELECTION OF CONTRACTUAL APPOINTMENTS.—** Selection will be made by the Recruitment Committee constituted by the Board.

**(VI) AGREEMENT.—** After selection of a candidate he/she shall sign an agreement as per Annexure-"B" appended to these Rules.

**(VII) TERMS AND CONDITIONS.—** (a) The Computer Data Operator appointed on contract basis will be paid consolidated contractual amount i.e. Rs. Per month. An amount of Rs. As annual increase in consolidated contractual amount for 2nd and 3rd years respectively will be allowed if contract is extended beyond one year.

(b) The service of the Contract Appointee will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the contract appointee is not found good.

(c) Contract appointee shall not confer any right to incumbent for the regularization in service at any stage.

(d) Contract appointee will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any other kind is admissible to the contract appointee. He/She shall not be entitled for Medical Reimbursement & LTC etc. only Maternity Leave will be given as per Rules.

(e) Unauthorized absence from the duties without the approval of the Controlling Officer shall automatically lead to the termination of the contract. Contract appointee shall not be entitled for salary for the period of absence from duty.

(f) Transfer of contract appointee will not be permitted from one place to another in any case.

(g) Selected candidate will have to submit a certificate of his/her fitness from a Govt./Registered Medical Practitioner. Women candidate, pregnant beyond 12 weeks will stand temporarily unfit till the confinement is over. The women candidate will be re-examined for the fitness from an authorized Medical Officer/Practitioner.

(h) Contract appointee will be entitled to TA/DA if required to go on tour in connection with his/her official duties at the same rate as applicable to Regular appointee.

(VIII) RIGHT TO CLAIM REGULAR APPOINTMENT.—The candidate engaged on contract basis under these Rules shall have no right to claim for regularization/permanent absorption as Accountant in the cadre in a Board/ Market Committee at any stage.

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| 16. | Reservation: | The appointment to the service shall be subject to orders regarding reservation in the service for scheduled castes/scheduled tribes backward classes/other categories of persons issued by the H.P. Government from time to time. |
| 17. | Departmental Examination. | Not applicable. |
| 18. | Power to Relax: | Where the Board is of the opinion that it is necessary or expedient so to do, it may with the prior approval of the State Govt. relax any of the provisions of these Rules with respect to any class or category of persons or posts. |

**ANNEXURE-"B"**

Form of contract/agreement to be executed between the Computer Data Operator & the H.P. State Agricultural Marketing Board through Managing Director. This agreement is made on this……. Day of ……..in the year ……. Between Sh/Smt……..S/O D/O Shri ……R/O …… contract appointee (hereinafter called the FIRST PARTY). AND The, H.P. State Agricultural Marketing Board through Managing Director, Himachal Pradesh (here in after called the SECOND PARTY).

Whereas, the SECOND PARTY has engaged the aforesaid FIRST PARTY and the FIRST PARTY has agreed to serve as a Computer Data Operator on contract basis on the following terms & conditions:—

1. That the FIRST PARTY shall remain in the service of the SECOND PARTY AS Computer Data Operator for a period of 1 year commencing on day of ……. And ending on the day of ……. It is specifically mentioned and agreed upon by both the parties that the contract of the FIRST PARTY with SECOND PARTY shall ipso facto stand terminated on the last working day i.e. on ……. And information notice shall not be necessary.

2. The FIRST PARTY will be paid a consolidated contractual amount i.e. Rs. per month. An amount of Rs. as annual increase in consoliated contractual amount for second and third yard respectively will be allowed if contract is extended beyond one year.

3. The service of FIRST PARTY will be purely on temporary basis. The appointment is liable to be terminated in case the performance/conduct of the FIRST PARTY is not found good.

4. The contractual appointment shall not confer any right to FIRST PARTY for the regular service at any stage.

5. Contractual Computer Data Operator will be entitled for one day casual leave after putting one month service. This leave can be accumulated upto one year. No leave of any kind is admissible to the contractual Computer Data Operator. He/She will not be entitled for Medical Reimbursement and LTC etc. only maternity leave will be given as per Rules.

6. Unauthorized absence from the duty without the approval of the controlling officer shall automatically lead to the termination of the contract. The FIRST PARTY will not be entitled for salary for the period of absence from duty.

7. Transfer of a Computer Data Operator appointed on contract basis will not be permitted from one place to another in any case.

8. Selected candidate will have to submit a certificate of his/her fitness from a Government/Registered Medical Practitioner. In case of women candidates pregnant beyond twelve weeks will render her temporarily unfit till the confinement is over. The women candidate should be re-examined for fitness from an authorized Medical Officer/practitioner.

9. Contractual Computer Data Operator shall be entitled to TA/DA if required to go on tour in connection with his official duties at the same rate as applicable to regular counter part Computer Data Operator.

10. The Employees Group Insurance Scheme, EPF and CPF will not be applicable to the contractual appointee(s).

IN WITNESS THE FIRST PARTY AND SECOND PARTY have herein to set their hands the day, month and year first, above written.

IN THE PRESENCE OF WITNESS :

1……
…….
…….

(Name and Full Address)

(Signature of the FIRST PARTY)

2……
…….
…….
(Name and Full Address)

IN THE PRESENCE OF WITNESS:

1……
…….
…….
(Name and Full Address)

(Signature of the SECOND PARTY)

2……
…….
…….
(Name and Full Address)

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित